DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

1999 SUPPLEMENT

UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 7A

1997 REPLACEMENT

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LEXIS Law Publishing
CHARLOTTESVILLE, VIRGINIA
1999

ISBN 0-327-08405-7
ISBN 0-327-08394-8 (set)

Law Number Assignments for Sections Appearing in the 1997 Replacement Volume

The following table shows sections appearing in the 1997 Replacement Volume which were affected by legislation for which a law number had not been assigned at the time of the publication of the 1997 Replacement Volume. The table is in Code section order and shows the D.C. Act number which affected each section, the D.C. Law number assigned to that D.C. Act and the effective date of the D.C. Law.

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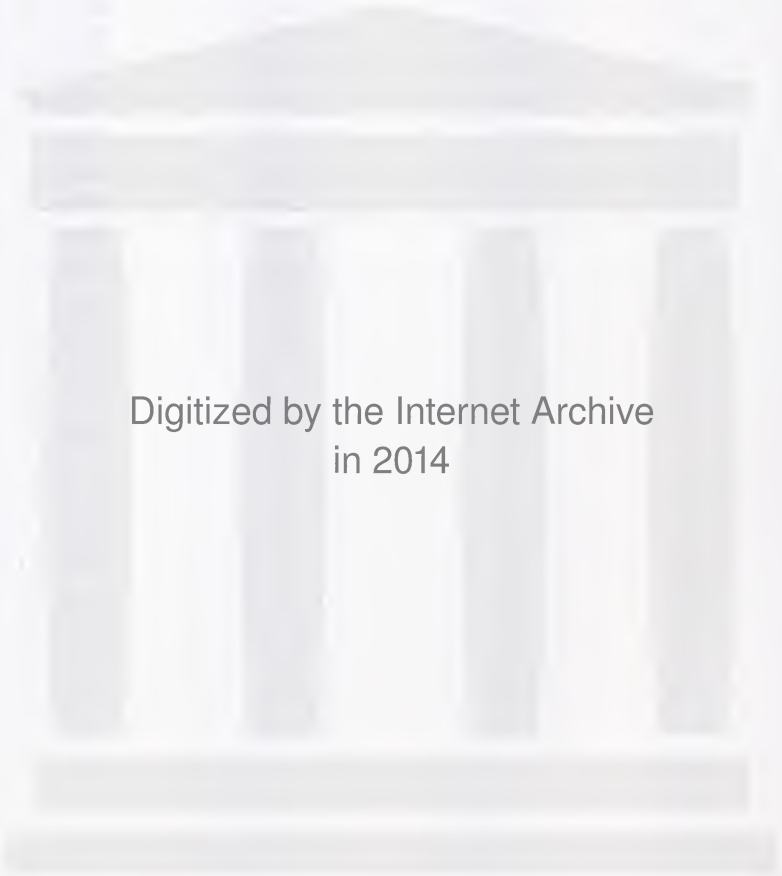

TITLE 35. INSURANCE.

Chapter 1. Insurance Department; General Provisions.

§ 35-102. General duties of Commissioner; companies or associations to file certain information; service of legal process; rules and regulations.

* * * * *

(e) The Commissioner shall maintain as confidential any documents or information received from the National Association of Insurance Commissioners or insurance departments of other states which is confidential in such other jurisdictions. The Commissioner may share information, including otherwise confidential information, with the National Association of Insurance Commissioners or insurance departments of other states so long as such other jurisdictions agree to maintain the same level of confidentiality as is available under District of Columbia law. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 646; Jan. 17, 1912, 37 Stat. 53, ch. 11; 1973 Ed., § 35-102; June 14, 1994, D.C. Law 10-128, § 404, 41 DCR 2096; Mar. 21, 1995, D.C. Law 10-233, § 2, 42 DCR 24; Apr. 18, 1996, D.C. Law 11-110, § 35, 43 DCR 530; May 24, 1996, D.C. Law 11-121, § 2, 43 DCR 1538; May 21, 1997, D.C. Law 11-268, § 10(d), 44 DCR 1730; Mar. 24, 1998, D.C. Law 12-81, § 19, 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 repealed former (e) and added present (e).

Legislative history of Law 12-81. — Law 12-81 the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on the first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-105. Required annual statement of business; tax payments; annuities exemption.

(a) Every insurance company and association doing business in the District of Columbia shall, through its local agents or representatives, furnish to the Commissioner, during the month of January of each year, a statement of its

business in the District, setting forth specifically the net amount of its premium receipts, the amount of losses paid, the amount of expenses incurred, respecting the business done in the District during the calendar year next preceding, and the Commissioner shall preserve a separate record of the same in his office for convenient reference, showing the ratio of such losses and expenses, respectively, to the premium receipts.

(b) Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations and nonprofit hospital and medical service corporations, shall, as required by law, pay to the Director of the Department of Finance and Revenue, or to a depository designated by the Director, in lieu of all other taxes, except taxes upon real estate and any license fees provided for in § 35-1324, an amount equal to the following:

(1)(A) One and seven tenths percent of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in the District during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

(B) In determining the gross amount of premiums to be taxed, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit-sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408, or 501(a) of the Internal Revenue Code, or successor provisions, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during the year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

(C) In determining the gross amount of premiums to be taxed, there shall be excluded all consideration received in connection with an annuity contract whether or not such contract is qualified or exempt under the Internal Revenue Code, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, and all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

(2) One and seven tenths percent of the gross amount of premiums, assessments, and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in the District, after deducting the amount returned upon canceled policies, certificates, and rejected applications.

(3) Except as provided in paragraph (4) of this subsection, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The Commissioner may suspend or revoke the license of a company or association that fails to pay premium tax on or before the due date.

(4) Each insurance company and association transacting business in the District whose District premium tax liability for the preceding calendar year was $1,000 or more shall remit on or before June 1, on a prepayment basis, an

amount equal to one-half of the premium tax liability for the preceding calendar year. The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The Commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

(c) Notwithstanding section 105, a hospital service corporation, medical service corporation, pharmaceutical service corporation, optometric service corporation and any other health service corporation shall pay as taxes to the director of the Department of Finance and Revenue an amount equal to 1% of the gross amount of payments received during the preceding calendar year for subscriber contracts covering residents in the District after deducting the amounts returned to subscribers upon canceled subscriber contracts and rejected applications.

(d) The Commissioner shall determine whether or not the tax remitted is correct. If the tax remitted is not sufficient, the Commissioner shall notify the delinquent company of the amount of such delinquency and certify the amount thereof to the Department of Finance and Revenue which shall proceed to collect such delinquency.

(e) An insurer may offset an assessment made pursuant to § 35-1946 ("Life and Health Insurance Guaranty Association Act"), against its premium tax liability pursuant to § 35-1950 to the extent of 10% of the amount of the assessment for each of the 10 calendar years following the year in which the assessment was paid. If an insurer ceases doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(f)(1) When by the laws of any other jurisdiction a premium or income or other taxes, or fees, fines, penalties, licenses, deposit requirement, or other obligations, prohibitions or restrictions are imposed upon District domestic insurance companies doing business in the other jurisdiction, or upon the agents of District companies, which in the aggregate are in excess of the aggregate of the taxes, fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the other jurisdiction under the statutes of the District, the same obligations, prohibitions or restrictions for whatever kind are in the same manner and for the same purpose imposed upon insurance companies of the other jurisdiction doing business in the District.

(2) Insurance premium taxes paid which were not paid under protest shall not be refunded if the refund claim is based upon an alleged error or mistake of law or erroneous interpretation of statute regarding the validity or legality of this section under the laws or constitution of the United States.

(3) For the purpose of this section, an alien insurer is deemed domiciled in a United States jurisdiction designated by it wherein it has established its principal office or agency in the United States, maintains the largest amount of its assets held in trust or on deposit for the security of its policyholders or policyholders and creditors in the United States, or in which it was admitted to do business in the United States.

(4) This section does not apply to ad valorem taxes on real or personal property or to personal income taxes. (Mar. 3, 1901, 31 Stat. 1291, ch. 854, § 650; June 30, 1902, 32 Stat. 534, ch. 1329; Aug. 17, 1937, 50 Stat. 676, ch. 690, title II, § 6; 1973 Ed., § 35-105; Apr. 19, 1977, D.C. Law 1-124, title X, § 1000, 23 DCR 8749; May 21, 1997, D.C. Law 11-268, § 10(d), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 201, 45 DCR 1172.)

Effect of amendments.

Section 201 of D.C. Law 12-86 rewrote the section.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it wasassigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

References in text. — "Sections 401, 403, 404, 408, and 501(a) of the Internal Revenue Code," referred to in (b)(1)(B), are codified at 26 U.S.C. §§ 401, 403, 404, 408, and 501(a), respectively.

"Section 105," referred to in (c), is probably § 105 of the Life Insurance Act, approved March 3, 1901.

Application of Law 12-86. — Section 203 of D.C. Law 12-86 provided that the provisions of Title II of the act shall be applicable to premiums received during the calendar year beginning Jan. 1, 1998, and subsequent years.

For temporary delay until Jan. 1, 1999, of the applicability of D.C. Law 12-86, as stated in § 203 of the Omnibus Regulatory Reform Amendment Act of 1998 (D.C. Law 12-86), see § 502 of the Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Temporary Amendment Act of 1998 (D.C. Law 12-154, § 502).

Section 601(b) of D.C. Law 12-154 provides that the act shall expire after 225 days of its having taken effect.

For temporary delay of the provisions of § 203 of the Omnibus Regulatory Reform Amendment Act of 1998 (D.C. Law 12-86), see § 502 of the Health Insurance Portability and Accountability Federal Law Conformity Emergency Amendment Act of 1998 (D.C. Act 12-339, May 4, 1998, 45 DCR 2947).

For temporary delay of the provisions of § 203 of the Omnibus Regulatory Reform Amendment Act of 1998 (D.C. Law 12-86), see § 502 of the Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-429, August 6, 1998, 45 DCR 5890).

§ 35-121. Definitions.

Section references. — This section is referred to in § 47-2853.4.

§ 35-124. Commissioner of Insurance and Securities.

Commissioner of the Department of Insurance and Securities Regulation Salary Approval Resolution of 1998. — Pursuant to Resolution 12-582, effective July 7, 1998, the Council approved the rate of pay for the Commissioner of the Department of Insurance and Securities Regulation.

Chapter 2. Provisions Applicable to More Than One Kind of Insurance.

Sec.

§ 35-201. Maintenance of reinsurance reserve fund by life and fire insurance companies or associations; suspension or revocation of license for insolvency or impairment of capital; aiding unlicensed companies or associations; issuance of license.

(a) All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of 25% of its capital stock it shall be the duty of the Commissioner to suspend its license; and unless such impairment or insolvency shall be made good within 60 days thereafter, it shall be the duty of the Commissioner of Insurance and Securities to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of $20 for each day it transacts business without such license to be recovered by the Mayor of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding $100, or, in default of payment thereof, by imprisonment in the jail of the District for not less than 10 nor more than 60 days. And the Commissioner of Insurance and Securities shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of § 35-102, subject, however, to the provisions of §§ 35-1301 and 35-1302; provided, that the Commissioner of Insurance and Securities shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to subchapters I through III of Chapter 27 of Title 6. Adjudication of any infraction of this section shall be pursuant to subchapters I through III of Chapter 27 of Title 6.

(b) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-201; Oct. 5, 1985, D.C. Law 6-42, § 470(d), 32 DCR 4450; May 21, 1997, D.C. Law 11-268, § 10(d), 44 DCR 1730; Apr. 20, 1999, D.C. Law 12-261, § 2003(gg)(1), 46 DCR 3142.)

Effect of amendments.
D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

Subchapter II. Domestic Stock Insurance Companies.

§ 35-213. Statements to be filed by beneficial owners, directors, or officers; sales restrictions; exemptions; equity security defined; rules and regulations; violations; effective date.

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(Mar. 24, 1998, D.C. Law 12-81, § 20, 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (g)(1).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997 and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D. C. Law 12-81 became effective on March 24, 1998.

CHAPTER 3. LIFE INSURANCE; DEFINITIONS.

Sec.
35-302. Definitions.

§ 35-302. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 21, 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (4).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997 and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CHAPTER 4. DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES.

§ 35-401. Department continued; personnel; performance of Commissioner's duties; seal; Commissioner's office and papers to be public; Commissioner's annual reports; out-of-state visits.

(a) There shall be continued in the District a department charged with the execution of the laws relating to insurance, to be called the "Department of Insurance and Securities Regulation." At the head of such Department there shall be a Commissioner of Insurance and Securities, who shall devote his entire service to the Department. He shall be appointed by and hold his office at the pleasure of the Mayor. The Commissioner, during his term of office, shall not be interested in the business of any insurance company except as a policyholder. He shall take and subscribe an oath of office which shall be filed with the Mayor. In said Department there shall be also 2 Deputy Commissioners and such other personnel as may be necessary within appropriations annually made by Congress for said Department. The compensation of the Commissioner, Deputy Commissioners, and other personnel shall be fixed in accordance with the provisions of Chapter 51 and subchapter III of Chapter 53 of Title 5, United States Code.

(b) In case of the absence or inability of the Commissioner, or in the event of the removal of the Commissioner, and pending the appointment of his successor, one of the Deputy Commissioners shall perform the duties of the Commissioner.

* * * * *

(g) The Commissioner is authorized to attend and participate in the meetings of the National Convention of Insurance Commissioners and of the committees thereof; he is also authorized to visit the insurance departments of the various states when in his judgment such visits are necessary for the proper conduct of his official office; and he may require such of his assistants as he may designate to attend and participate in such meetings, all subject to the prior approval of the Mayor. The actual expense of such attendance by the Commissioner and his assistants shall be paid in like manner as other expenses of the District are paid. (June 19, 1934, 48 Stat. 1129, ch. 672, ch. II, § 1; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); 1973 Ed., § 35-401; May 21, 1997, D.C. Law 11-268, § 10(i), 44 DCR 1730; Mar. 24, 1998, D.C. Law 12-81, § 22(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997 and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-411. Defamatory or injurious false statements against companies.

Claim for defamation not shown. — Individual plaintiff failed to state a claim under this section upon which relief could be granted when she merely alleged that defendant federal agency purportedly rejected her unsolicited research proposals, and did not allege that defendant uttered defamatory statements against her or her company. Slaby v. Fairbridge, 3 F. Supp. 2d 22 (D.D.C. 1998).

§ 35-415. Deposit of securities by companies desiring to transact business — Amount; deposits outside District.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 22(b), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (a).

Legislative history of Law 12-81. — See note to § 35-401.

§ 35-422. Valuation of securities.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 22(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-401.

Chapter 5. Provisions Relating to All Life Insurance Companies.

§ 35-501. Valuation of reserves by Commissioner.

(a)(1) The Commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in the District, except that in the case of an alien company such valuation shall be limited to its insurance transactions in the

United States, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves. All such valuations made by him or by his authority shall be made upon the net premium basis. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the Commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to a minimum standard herein provided may, with the approval of the Commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(b)(1) This subsection shall apply to only those policies and contracts issued prior to the operative date of § 35-507 (the standard nonforfeiture law).

(2) The legal minimum standard for the valuation of life insurance contracts issued before January 1, 1935, shall be the method and basis of valuation heretofore applied by the Commissioner in the valuation of such contracts, and for life insurance contracts issued on and after said date shall be the 1-year preliminary term method of valuation, except as hereinafter modified, on the basis of the American Experience Table of Mortality with interest at 3½% per annum; provided, that any life company may, at its option, value its insurance contracts issued on and after January 1, 1935, in accordance with their terms on the basis of the American Men Ultimate Table of Mortality with interest not higher than 3½% per annum by the level net premium method or by the modified preliminary term method hereinafter described.

(3) If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than 20 years from date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under 20-payment life preliminary term policies of the same company, the reserve thereon at the end of the year, including the 1st, shall not be less than the reserve on a 20-payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a 20-payment life preliminary term policy and the full net level premium reserve at such time of such a limited payment life or endowment policy. The premium payment period is the period during which premiums are concurrently payable under such 20-payment life preliminary term policy and such limited payment life or endowment policy.

(4) Policies issued on the preliminary term method shall contain a clause specifying that the reserve thereof shall be computed in accordance with modified preliminary term method of valuation provided for herein.

(5) Except as otherwise provided in paragraph (3) of subsection (c) of this section for group annuity and pure endowment contracts, the legal minimum standard for the valuation of annuities issued on and after January 1, 1935, shall be McClintock's Table of Mortality Among Annuitants, with interest at 4% per annum, but annuities deferred 10 or more years and written in connection with life insurance shall be valued on the same basis as that used in computing the consideration or premium therefor, or upon any higher standard at the option of the company.

(6) The legal minimum standard for the valuation of industrial policies issued after January 1, 1935, shall be the American Experience Table of Mortality with interest at 3½% per annum; provided, that any life company may voluntarily value its industrial policies on the basis of the standard industrial mortality table or the substandard industrial mortality table by the level net premium method or in accordance with their terms by the modified preliminary term method hereinbefore described.

(7) The Commissioner may vary the standards of interest and mortality in the case of alien companies as to contracts issued by such companies in countries other than the United States, and in particular cases of invalid lives and other extra hazards.

(8) Reserves for all such policies and contracts may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(c)(1) This subsection shall apply to only those policies and contracts issued on or after the operative date of § 35-507 (the standard nonforfeiture law) except as otherwise provided in paragraph (3) of this subsection for group annuity and pure endowment contracts issued prior to such operative date.

(2) Except as otherwise provided in paragraph (3) of this subsection and subsection (d) of this section, the minimum standard for the valuation of all such policies and contracts shall be the Mayor's reserve valuation methods defined in paragraphs (4) and (5) of this subsection and in § 35-526, 3½% interest per annum, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the October 13, 1978, 4½% interest per annum, and the following tables:

(A) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of paragraph (5) of § 35-507(d), and the Commissioners 1958 Standard Ordinary Mortality Table for category of the policies issued on or after the operative date of the 5th paragraph in § 35-507(d) and before the operative date for the category of policies described in § 35-507(e); provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured and for any category of the policies issued on or after the operative date for the category described in § 35-507(e), the Commission-

ers 1980 Standard Ordinary Mortality Table, or at the election of the company for any 1 or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies;

(B) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of paragraph (6) of subsection (d) of § 35-507, and for such policies issued on or after such operative date; provided, that for any category of such policies issued on female risks and evaluated by either the 1941 Standard Industrial Mortality Table or the Commissioners 1961 Standard Industrial Mortality Table, all modified net premiums and present values referred to in this section may be calculated according to an age not more than 6 years younger than the actual age of the insured, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies;

(C) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, Ultimate, or any modification of either of these Tables approved by the Commissioner;

(D) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies, the Group Annuity Mortality Table for 1951, any modification of such Table approved by the Commissioner, or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;

(E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts, for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 Disability Study of the Society of Actuaries, with due regard to the type of benefit, or any tables of disablement rates and termination rates adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the policies; for policies or contracts issued on or after January 1, 1961, and prior to January 1, 1966, either such tables or, at the option of the company, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies;

(F) For accidental death benefits in or supplementary to policies, for policies issued on or after January 1, 1966, the 1959 Accidental Death Benefits Table or any accidental death benefits table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standards for valuing the policies; for policies issued on or after January 1, 1961, and prior to January 1, 1966, either such

table or, at the option of the company, the Intercompany Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Intercompany Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; or

(G) For group life insurance, life insurance issued on the substandard basis and other special benefits, such tables as may be approved by the Commissioner.

(3)(A) Except as provided in subsection (d) of this section, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts shall be the Mayor's reserve valuation methods defined in paragraphs (4) and (5) of this subsection and the following tables and interest rates:

(i) For individual single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the mimimum standard for valuing the contracts, or any modification of the tables approved by the Commissioner and 7½% interest per annum;

(ii) For individual annuity and pure endowment contracts, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the contracts, or any modification of the tables approved by the Commissioner and 5½% interest per annum for single premium deferred annuity and pure endowment contracts and 4½% interest per annum for all other such individual annuity and pure endowment contracts; or

(iii) For all annuities and pure endowments purchased under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, any group annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners and approved by the Commissioner for determining the minimum standard for valuing the annuities and the pure endowments, or any modification of the tables approved by the Commissioner and 7½% interest per annum.

(B) After October 13, 1978, any company may file with the Commissioner a written notice of its election to comply with the provisions of this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for such company, provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph for such company shall be January 1, 1979.

(4)(A) Except as provided in paragraph (5) of this subsection and in § 35-526, and according to the reserve valuation method, reserves for life

insurance and endowment benefits from policies providing uniform amounts of insurance and requiring uniform premium payments shall be the excess of the present value, on the valuation date, of the future guaranteed benefits from the policies over the then present value of any future modified net premiums.

(B) The modified net premiums shall be a uniform percentage of the respective premiums that makes the present value, on the issuance date, of all modified net premiums equal the sum of the then present value of the benefits and the excess of the amount described in sub-subparagraph (i) of this subparagraph over the amount described in sub-subparagraph (ii) of this subparagraph.

(i) Except as provided in subparagraph (C) of this paragraph, a net level annual premium equal to the present value, on issuance date, of the benefits provided after the first policy year, divided by the present value, on issuance date, of an annuity of one per year to be paid on every anniversary of the policy for which a premium becomes due.

(ii) A net 1-year term premium for the benefits provided in the first policy year.

(C) The net level annual premium described in subparagraph (B)(i) of this paragraph shall not exceed the net level annual premium or the 19-year premium whole life plan for insuring the same amount at an age one year higher than the age at issuance in the policy.

(4A)(A) This paragraph governs life insurance policies issued after December 31, 1986, when the policies have the following features:

(i) The premium for the first year of the life insurance policy exceeds the premium for the second year.

(ii) The policy does not provide an additional benefit in the first year of the policy for the amount that the 1st-year premium exceeds the premium for the second year.

(iii) The policy provides an endowment benefit or a cash surrender value that exceeds the difference in the first year and the second year premiums.

(B) Except as provided in § 35-502, and according to the reserve valuation method on any policy anniversary that takes place no later than the 1st year after a life insurance policy provides an endowment benefit or a cash surrender value that, together, exceeds the difference in the premiums described in subparagraph (A)(i) of this paragraph, the reserve shall be the greater of the following amounts:

(i) The reserve on the policy anniversary as described in paragraph (4) of this subsection.

(ii) The reserve on the policy anniversary as described in paragraph (4) of this subsection, but with the amount described in paragraph (4)(B)(i) of this subsection reduced by 15% of the excess first year premium, with present values of benefits and premiums determined without reference to premiums or benefits after the first year after a life insurance policy provides an endowment benefit or a cash surrender value that, together, exceeds the difference in the premiums described in subparagraph (A)(i) of this paragraph, with an assumption that the policy will mature as an endowment on that date; and with the cash surrender value provided on that date regarded as an endowment benefit.

(C) For the comparison described in subparagraph (B) of this paragraph, the mortality and interest bases described in paragraphs (3) and (4) of this subsection and in subsection (d)(2) and (3) of this section shall apply.

(5)(A) This paragraph shall apply to all annuity and pure endowment contracts except those group annuity and pure endowment contracts for which reserves are to be calculated by a method consistent with the principles of paragraph (4) of this subsection.

(B) Reserves according to the Mayor's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation consideration derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(6) In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, be less than the aggregate reserves calculated according to the method described in paragraph (4) of this subsection, in subsection (e) of this section, in § 35-526, and in the mortality tables and rates of interest used to calculate nonforfeiture benefits for the policies.

(7) Reserves for any category of policies, contracts, or benefits, as established by the Commissioner, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(d)(1) The calendar year statutory valuation interest rates shall be the interest rates used to determine the minimum standard for valuing the following:

(A) Life insurance benefits under § 35-507 and issued no earlier than the operative date for policies under § 35-507(e).

(B) All annuities and pure endowments purchased under group annuity and pure endowments contracts after December 31, 1983.

(C) Except as provided in subparagraphs (A) and (B) of this paragraph, all life insurance benefits, individual annuity contracts, and pure endowment contracts issued after December 31, 1983.

(D) In a calendar year following December 31, 1983, the net increase of amounts held under guaranteed interest contracts.

(2) The calendar year statutory valuation interest rates shall be determined according to the equations described in this paragraph, and the results from the equations shall be rounded to the nearest ¼%.

(A) For life insurance, the equation for determining the calendar year statutory valuation interest rates is the following:

$$I = .03 + W (R - .03) + {}^{w}/_{2} (R2 - .09).$$

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where ${}^{R}/_{1}$ is the lesser of R and .09,

${}^{R}/_{2}$ is the greater of R and .09,

R is the reference interest rate described in paragraph (4) of this subsection,

and W is the weighting factor.

(C) Where cash settlement options are valued on an issue year basis, the formula in subparagraph (A) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration exceeding 10 years and the formula in subparagraph (B) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of 10 years or less.

(D) Where no cash settlement options apply, the formula for single premium immediate annuities stated in subparagraph (B) of this paragraph shall apply.

(E) Where cash settlement options are valued on a change in fund basis, the formula for single premium immediate annuities stated in subparagraph (B) of this paragraph shall apply.

(F)(i) If the calendar year statutory valuation interest rate for life insurance policies for a calendar year differs from the actual interest rate for similar policies issued in the preceding calendar year by less than ½%, the calendar year statutory valuation interest rate shall equal the corresponding actual interest rate for the preceding calendar year.

(ii) The calendar year statutory valuation interest rate shall be determined for each calendar year regardless of when § 35-507(e) becomes operative.

(3) The weighting factors in the paragraph (2)(A) and (B) of this subsection equations are as follows:

(A) Weighting factors for life insurance:

Guarantee Duration (Years)	*Weighting Factors*
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy.

(B) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options: .80.

(C) Except as provided in subparagraph (B) of this paragraph, weighting factors for other annuities and for guaranteed interest contracts shall be specified in the following sub-subparagraphs:

(i) For purposes of this subsection, the following plan types apply:

"Plan Type A" means that, unless the company prohibits a withdrawal, the policyholder may withdraw funds with an adjustment to reflect changes in interest rates or asset values since the company received the funds; without adjustment, but in installments for 5 years or more; or as an immediate life annuity.

"Plan Type B" means that, before the interest rate guarantee expires, and unless the company prohibits a withdrawal, the policyholder may withdraw funds with an adjustment to reflect changes in interest rates or asset values since the company received the funds; without the adjustment, but in installments for 5 years or more; or, after the interest rate guarantee ends, in a lump sum without the adjustment or in installments lasting less than 5 years.

"Plan Type C" means that, before the interest rate guarantee expires, the policyholder may withdraw funds in a lump sum or in installments lasting less than 5 years, and either without the withdrawal being adjusted to reflect changes in interest rates or asset values since the company received the funds or with the withdrawal subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(ii) Weighting factors for annuities and guaranteed interest contracts valued on an issue year basis:

5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35.

(iii) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in sub-subparagraph (ii) of this subparagraph increased by:

Plan Type		
A	*B*	*C*
.15	*.25*	*.05.*

(iv) For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) and which do not guarantee interest on considerations received more than one year after issue or purchase, and for annuities and guaranteed interest contracts valued on a change in fund basis and which do not guarantee interest rates on considerations received more than 12 months beyond the valuation date, the factors shown in sub-subparagraph (ii) of this subparagraph or derived in sub-subparagraph (iii) of this subparagraph increased by:

Plan Type		
A	*B*	*C*
.05	*.05*	*.05.*

(v) Where cash settlement options apply to annuities and guaranteed interest contracts, the guarantee duration is the number of years that the

contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of 20 years.

(vi) Where no cash settlement options apply to annuities or guaranteed interest contracts, the guarantee duration is the number of years from the issuance or the purchase date that the policy has scheduled the annuity benefits to begin.

(D)(i) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis.

(ii) Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis.

(iii) An issue year basis of valuation refers to a valuation basis where the interest rate used to determine the minimum valuation standard for the annuity or the guaranteed interest contract is the calendar year valuation interest rate for the issuance year or purchase year.

(iv) The change in fund basis of valuation refers to a valuation basis where the interest rate used to determine the minimum valuation standard for each change in the annuity or the guaranteed interest contract fund is the calendar year valuation interest rate for the year that the fund changed.

(4) The reference interest rate referred to in paragraph (2) of this subsection shall be as follows:

(A) For all life insurance, the reference rate shall be the lesser between the average rate during a 36-month period and the average rate during a 12-month period ending June 30 of the calendar year preceding the issuance year.

(B) For single premium immediate annuities and for annuity benefits involving life contingencies arising where cash settlement options apply to other annuities and to guaranteed interest contracts, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(C) Where guarantee duration exceeds 10 years and where cash settlement options for annuities and for guaranteed interest contracts have values based upon the issuance year, the reference rate shall be the least between the average rate during a 36-month period and the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(D) Where guarantee duration does not exceed 10 years and where cash settlement options for annuities and for guaranteed interest contracts have values based upon the issuance year, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(E) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of issue or purchase.

(F) Where cash settlement options apply to annuities and to guaranteed interest contracts and have values based on a change in the fund, the reference rate shall be the average rate during a 12-month period ending June 30 of the calendar year of the change in the fund.

(5)(A) Moody's Corporate Bond Yield Average — Monthly Average Corporate published by Moody's Investors Service, Inc., shall set the reference rates described in paragraph (4) of this subsection.

(B) If the National Association of Insurance Commissioners determines that Moody's Investors Service, Inc., is no longer an appropriate source for the reference rate, then an alternative method shall be adopted by the National Association of Insurance Commissioners and approved by the Commissioner.

(e) For life insurance plans which require the company to fix future premium determination according to the then present estimates of future experience, and for life insurance plans or annuities with minimum reserves that cannot be determined by the methods described in subsection (c)(5) and (6) of this section and in § 35-526, the reserves held under the plan shall:

(1) Be appropriated in relation to the benefits and the pattern of premiums for the plan.

(2) Be computed by a method consistent with the principles of the Standard Valuation Law and according to regulations promulgated by the Commissioner. (June 19, 1934, 48 Stat. 1156, ch. 672, ch. V, § 1; Feb. 19, 1948, 62 Stat. 27, ch. 66, § 1; June 27, 1960, 74 Stat. 227, Pub. L. 86-530, § 1; Oct. 3, 1962, 76 Stat. 711, Pub. L. 87-738, § 1; 1973 Ed., § 35-701; Oct. 13, 1978, D.C. Law 2-120, §§ 2, 3, 25 DCR 1519; Mar. 14, 1985, D.C. Law 5-160, § 3(d), 32 DCR 39; May 21, 1997, D.C. Law 11-268, § 10(j), 44 DCR 1730.)

Editor's notes.
The text of this section has been set out to correct errors appearing in the bound volume.

§ 35-507. Standard nonforfeiture law — In general.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (j)(2).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-508. Same — Individual deferred annuities.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in the introductory paragraph of (b)(1) and in (k).

Legislative history of Law 12-81. — See note to § 35-507.

§ 35-512. Filing and approval of life policy forms.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-507.

§ 35-517. Individual accident and sickness policies.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(d), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (c)(1)(I)(ii) and (h)(2)(A).

Legislative history of Law 12-81. — See note to § 35-507.

§ 35-532. Commissioner's review of test.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(e), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-507.

§ 35-536. Operative dates of §§ 35-531 through 35-536.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 23(f), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections throughout the section.

Legislative history of Law 12-81. — See note to § 35-507.

CHAPTER 6. DOMESTIC LIFE COMPANIES.

§ 35-601. Formation — Required contents of articles of incorporation.

Section references. — This section is referred to in §§ 35-4703 and 35-3723.

§ 35-610. Increase of capital stock.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 24(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in the clause designated as (2)(E) in (b).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997 and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-626. Liability of directors.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 24(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-610.

§ 35-637. Manner of keeping books, records, accounts, and vouchers.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 24(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-610.

§ 35-638. Acquisition of own capital stock.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 24(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-610.

Chapter 10. Credit Life, Accident, and Health Insurance.

Sec.
35-1002. Definitions.
35-1007. Filing requirements; forms and rates to be approved by Commissioner.

§ 35-1002. Definitions.

For the purpose of this chapter:

* * * * *

(1A) "Commissioner" means the Commissioner of Insurance and Securities.

* * * * *

(8) Repealed. (Sept. 25, 1962, 76 Stat. 580, Pub. L. 87-686, § 2; 1973 Ed., § 35-1602; May 21, 1997, D.C. Law 11-268, § 10(m), 44 DCR 1730; Mar. 24, 1998, D.C. Law 12-81, § 25(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 inserted (1A); and repealed (8).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997 and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-1007. Filing requirements; forms and rates to be approved by Commissioner.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 25(b), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (d).

Legislative history of Law 12-81. — See note to § 35-1002.

CHAPTER 10A. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY.

Subchapter I. General Provisions.

Sec.
35-1021. Definitions.

Subchapter II. Individual Health Insurance.

35-1022. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.
35-1023. Special rules for network plans.
35-1024. Application of financial capacity limits.
35-1025. Market requirements.
35-1026. Renewability of individual health insurance coverage.
35-1027. Fair market provision.
35-1028. Regulations establishing standards.
35-1029. Applicability.
35-1030. Construction.

Subchapter III. Group Insurance.

Sec.
35-1031. Application of subchapter.
35-1032. Availability of health benefit plans to small employers.
35-1033. Renewability.
35-1034. Reference to plan sponsor.
35-1035. Coverage.
35-1036. Availability.
35-1037. Limitation on preexisting condition exclusion period.
35-1038. Disclosure of information.
35-1039. Eligibility to enroll.
35-1040. Exclusions.
35-1041. Rules used to determine group size.
35-1042. Affiliation period.
35-1043. Alternative methods.
35-1044. Applicability.

Subchapter I. General Provisions.

§ 35-1021. Definitions.

For the purposes of this chapter, the term:

(1) "Affiliation period" means a period which, under the terms of the health insurance coverage offered by a health maintenance organization, must expire before the health insurance coverage becomes effective. The health maintenance organization is not required to provide health care services or

benefits during such period and no premium shall be charged to the participant or beneficiary for any coverage during the period. Such period shall begin on the enrollment date. An affiliation period under a plan shall run concurrently with any waiting period under the plan.

(2) "Beneficiary" has the meaning given such term under section 3(8) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 834; 29 U.S.C. § 1002(8)).

(3) "Bona fide association" means, with respect to health insurance coverage offered in the District of Columbia, an association which:

(A) Has been actively in existence for at least 5 years;

(B) Has been formed and maintained in good faith for purposes other than obtaining insurance

(C) Does not condition membership in the association on any health status-related factor relating to an individual (including an employee of an employer or a dependent of an employee);

(D) Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to such members (or individuals eligible for coverage through a member);

(E) Does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

(F) Meets such additional requirements as may be imposed under the laws of the District of Columbia.

(4) "Certification" means a written certification of the period of creditable coverage applicable to an individual.

(5) "Church plan" has the meaning given such term under section 3(33) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 838; 29 U.S.C. § 1002(33)).

(6) "COBRA continuation provision" means any of the following:

(A) Section 3011(a) of the Internal Revenue Code of 1986, approved November 10, 1988 (102 Stat. 3616; 26 U.S.C. § 4980B), other than subsection (f)(1) of such section insofar as it relates to pediatric vaccines;

(B) Part 6 of subtitle B of Title I of the Employee Retirement Income Security Act of 1974, approved April 7, 1986 (100 Stat. 227; 29 U.S.C. § 1161 et seq.), other than section 609 of such Act; or

(C) Title XXII of the Public Health Service Act, approved July 1, 1994 (100 Stat. 232; 42 U.S.C. § 300bb-1 et seq.).

(7) "Commissioner" means the Commissioner of the Department of Insurance and Securities Regulation.

(8)(A) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

(i) A group health plan;

(ii) Health insurance coverage;

(iii) Part A or B of Title XVIII of the Social Security Act, approved July 30, 1965 (79 Stat. 291; 42 U.S.C. § 1395c et seq. or 1395j et seq., respectively);

(iv) Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), other than coverage consisting solely of benefits under section 1928;

(v) Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.);

(vi) A medical care program of the Indian Health Service or of a tribal organization;

(vii) A state health benefits risk pool

(viii) A health plan offered under Chapter 89 of Title 5, United States Code (5 U.S.C. § 8901 et seq.);

(ix) A public health plan (as defined in regulations); or

(x) A health benefit plan under section 5(e) of the Peace Corps Act, approved September 22, 1961 (75 Stat. 614; 22 U.S.C. § 2504(e)).

(B) "Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits.

(9) "Dependent" means the spouse or child of an eligible employee, subject to the applicable terms of the policy, contract, or plan covering the eligible employee.

(10) "Eligible employee" means an employee who works for a small group employer on a full-time basis, has a normal work week of 30 or more hours, has satisfied applicable waiting period requirements, and is not a part-time, temporary, or substitute employee.

(11) "Eligible individual" means an individual:

(A)(i) For whom, as of the date on which the individual seeks individual coverage under this chapter, the aggregate of the periods of creditable coverage is 18 or more months, and (ii) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any such plan;

(B) Who is not eligible for coverage under (i) a group health plan, (ii) part A or part B of Title XVIII of the Social Security Act, or (iii) a state plan under Title XIX of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or any successor program, and does not have other health insurance coverage;

(C) With respect to whom the most recent coverage within the coverage period described in subparagraph (A) of this paragraph was not terminated based on a factor described in § 35-10-26(b) relating to nonpayment of premiums or fraud;

(D) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, who elected such coverage; and

(E) Who, if the individual elected such continuation coverage, has exhausted such continuation coverage under such provision or program.

(12) "Employer" has the meaning given such term under section 3(5) of the Employee Retirement Income Security Act of 1974, approved September 12, 1974 (88 Stat. 834; 29 U.S.C. § 1002(5)), except that such term shall include only employers of 2 or more employees.

(13) "Enrollment date" means, with respect to an eligible individual covered under a group health plan or health insurance coverage, the date of enrollment of the eligible individual in the plan or coverage or, if earlier, the first day of the waiting period for such enrollment.

(14) "Established geographic service area" means the District of Columbia.

(15) "Excepted benefits" means benefits under one or more (or any combination thereof) of the following:

(A) Benefits not subject to the requirements of this chapter including:

(i) Coverage only for accident, or disability income insurance, or any combination thereof;

(ii) Coverage issued as a supplement to liability insurance;

(iii) Liability insurance, including general liability insurance and automobile liability insurance;

(iv) Workers' compensation or similar insurance;

(v) Medical expense and loss of income benefits;

(vi) Credit-only insurance;

(vii) Coverage for on-site medical clinics; and

(viii) Other similar insurance coverage, specified in regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;

(B) Benefits not subject to the requirements of this chapter if offered separately including:

(i) Limited scope dental or vision benefits;

(ii) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and

(iii) Such other similar, limited benefits as are specified in regulations;

(C) Benefits not subject to the requirements of this chapter if offered as independent, noncoordinated benefits including:

(i) Coverage only for a specified disease or illness; and

(ii) Hospital indemnity or other fixed indemnity insurance; and

(D) Benefits not subject to the requirements of this chapter if offered as a separate insurance policy including:

(i) Medicare supplemental health insurance (as defined under section 1882(g)(1) of the Social Security Act, approved June 9, 1980 (72 Stat. 1445; 42 U.S.C. § 1395ss(g)(1));

(ii) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code (10 U.S.C. § 1071 et seq.); and

(iii) Similar supplemental coverage provided to coverage under a group health plan.

(16) "Federal governmental plan" means a governmental plan established or maintained for its employees by the government of the United States or by an agency or instrumentality of such government.

(17) "Governmental plan" has the meaning given such term under section 3(32) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 837; 29 U.S.C. § 1002(32)) and any federal governmental plan.

(18) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan.

(19) "Group health plan" means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(1)), to the extent that the plan provides medical care and includes items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

(20) "Health benefit plan" means any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term "health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans, pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(21) "Health insurance coverage" means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and includes items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital, or medical service plan contract, or health maintenance organization contract offered by a health insurer.

(22) "Health insurer" means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner.

(23) "Health maintenance organization" means:

(A) A federally qualified health maintenance organization;

(B) An organization recognized under the laws of the District of Columbia as a health maintenance organization; or

(C) A similar organization regulated under the laws of the District of Columbia for solvency in the same manner and to the same extent as such a health maintenance organization.

(24) "Health status-related factor" means the following in relation to the individual or a dependent eligible for coverage under a group health plan or health insurance coverage offered by a health insurer:

(A) Health status;

(B) Medical condition (including both physical and mental illnesses);

(C) Claims experience;

(D) Receipt of health care;

(E) Medical history;

(F) Genetic information;

(G) Evidence of insurability (including conditions arising out of acts of domestic violence); or

(H) Disability.

(25) "High level policy form" means a policy or plan under which the actuarial value of the benefit under the coverage is:

(A) At least 15% greater than the actuarial value of the low level policy form coverage offered by the carrier in the District of Columbia; and

(B) At least 100%, but not greater than 120%, of the weighted average.

(26) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include coverage defined as excepted benefits. The term "individual health insurance coverage" does not include short-term limited duration coverage.

(27) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(28) "Initial enrollment period" means a period of at least 30 days.

(29) "Large employer" means, in connection with a group health plan or health insurance coverage with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(30) "Large group market" means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a large employer or through a health insurer.

(31) "Late enrollee" means an eligible employee or dependent who requests enrollment in a group health benefit plan after the initial enrollment period provided under the terms of the group health benefit plan, or a participant or beneficiary who enrolls under the plan other than during (i) the first period in which the individual is eligible to enroll under the plan, or (ii) a special enrollment period as required pursuant to this statute. An eligible employee or dependent shall not be considered a late enrollee if all of the conditions set forth below in subparagraphs (A) through (D) of this paragraph are met, or one of the conditions set forth below in subparagraphs (E) or (F) of this paragraph is met:

(A) The individual was covered under a public or private health benefit plan at the time the individual was eligible to enroll;

(B) The individual certified at the time of initial enrollment that coverage under another health benefit plan was the reason for declining enrollment;

(C) The individual has lost coverage under a public or private health benefit plan as a result of termination of employment or employment status eligibility, the termination of the other plan's entire group coverage, death of a spouse, or divorce;

(D) The individual requests enrollment within 30 days after termination of coverage provided under a public or private health benefit plan;

(E) The individual is employed by a small employer that offers multiple health benefit plans and the individual elects a different plan offered by that small employer during an open enrollment period; or

(F) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan, the minor is eligible for coverage and is a dependent, and the request for enrollment is made within 30 days after issuance of such court order. However, such individual may be considered a late enrollee for benefit riders or enhanced coverage levels not covered under the enrollee's prior plan.

(32) "Low level policy form" means a policy or plan under which the actuarial value of the benefit under the coverage is at least 85%, but not greater than 100%, of the weighted average.

(33) "Medical care" means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body.

(34) "Network plan" means health insurance coverage of a health insurer under which the financing and delivery of medical care (including items and services paid for as medical care) are provided, in whole or in part, through a defined set of providers under contract with the health insurer.

(35) "Nonfederal governmental plan" means a governmental plan that is not a federal governmental plan.

(36) "Participant" has the meaning given such term under section 3(7) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 834; 29 U.S.C. § 1002(7)).

(37) "Placed for adoption", "placement", or "being placed for adoption", in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

(38) "Plan sponsor" has the meaning given such term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, approved September 2, 1974 (88 Stat. 835; 29 U.S.C. § 1002 (16)(B)).

(39) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the first day of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. Genetic information shall not be treated as a preexisting condition in the absence of a diagnosis of the condition related to such information.

(40) "Preexisting conditions provision" means a provision in a health benefit plan that limits, denies, or excludes benefits for an enrollee for expenses or services related to a preexisting condition.

(41) "Premium" means all moneys paid by a small employer and eligible employees as a condition of coverage from a health insurer, including fees and other contributions associated with the health benefit plan.

(42) "Small employer" means an employer who employed an average of at least 2, but not more than 50, employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(43) "State" means each of the several states, and the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(44) "Waiting period" means, with respect to a group health plan or health insurance coverage provided by a health insurer and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

(45)(A) "Weighted average" means the average actuarial value of the benefits provided by:

(i) All the health insurance coverages issued (as elected by the health insurer) either by that health insurer or by all health insurers in the District

of Columbia in the individual market during the previous calendar year (not including coverage issued under this section), weighted by enrollment for the different coverages; or

(ii) All the health insurance coverages issued by all health insurers in the District of Columbia in the individual market, if the data are available, during the previous calendar year, weighted by enrollment for the different coverages.

(B) The term "weighted average" does not include coverages issued pursuant to § 34-1022(d)(1).

(C) The health insurer shall elect biennially, as provided in § 35-1022(d)(3), whether to calculate the weighted average using the methodology in subparagraph (A)(i) or (ii) of this paragraph. (Apr. 13, 1999, D.C. Law 12-209, § 101, 45 DCR 8433.)

Temporary addition of chapter. — Sections 101 through 314 of D.C. Law 12-27 and D.C. Law 12-154 enacted §§ 35-1021 through 35-1044, comprising Chapter 10A of Title 35.

Section 501(b) of D.C. Law 12-27 provides that the act shall expire after 225 days of its having taken effect.

Section 601(b) of D.C. Law 12-154 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of chapter, see §§ 101-314 of the Health Insurance Portability and Accountability Federal Law Conformity Emergency Act of 1997 (D.C. Act 12-96, July 2, 1997, 44 DCR 4000), §§ 101-314 of the Health Insurance Portability and Accountability Federal Law Conformity Congressional Recess Emergency Act of 1997 (D.C. Act 12-151, September 29, 1997, 44 DCR 5769), and §§ 101-314 of the Health Insurance Portability and Accountability Federal Law Conformity Emergency Amendment Act of 1998 (D.C. Act 12-339, May 4, 1998, 45 DCR 2947).

Section 501 of D.C. Act 12-151 provides for the application of the act.

For temporary addition of chapter, see §§ 101-314 of the Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Congresional Review Emergency Amendment Act of 1998 (D.C. Act 12-429, August 6, 1998, 45 DCR 5890).

Legislative history of Law 12-27. — Law 12-27, the "Health Insurance Portability and Accountability Federal Law Conformity Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-247. The Bill was adopted on first and second readings on June 3, 1997, and June 17, 1997, respectively. Signed by the Mayor on July 7, 1997, it was assigned Act No. 12-113 and transmitted to both Houses of Congress for its review. D.C. Law 12-27 became effective on October 8, 1997.

Legislative history of Law 12-154. — Law 12-154, the "Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-611. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-373 and transmitted to both Houses of Congress for its review. D.C. Law 12-154 became effective on September 18, 1998.

Legislative history of Law 12-209. — Law 12-209, the "Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998," was introduced in Council and assigned Bill No. 12-419, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-496, and transmitted to both Houses of Congress for its review. D.C. Law 12-209 became effective on April 13, 1999.

Subchapter II. Individual Health Insurance.

§ 35-1022. Guaranteed availability of individual health insurance coverage to certain individuals with prior group coverage.

(a) This subchapter applies only to those health insurers that offer individual health insurance coverage in the District of Columbia. Nothing in this subchapter shall require health insurers participating only in the group health insurance market to offer individual health insurance coverage.

(b) A health insurer may not offer any individual health benefit plans in the District of Columbia unless the health insurer offers, and actively markets, the policies required by this section.

(c) Unless a health insurer makes an election under subsection (d)(2) of this section, the health insurer may not:

(1) Decline to offer coverage to, or deny enrollment of, an eligible individual; or

(2) Impose any preexisting condition provision on an eligible individual.

(d)(1) A health insurer that makes an election under paragraph (2) of this subsection may choose to offer at least 2 different policy forms, both of which are designed for, made generally available to, actively marketed to, and enroll both eligible individuals and other individuals. Policy forms that have different cost-sharing arrangements or different riders shall be considered to be different policy forms.

(2) No later than July 1, 1997, a health insurer that intends to offer 2 policy forms shall submit in writing to the Commissioner both:

(A) An election whether to offer (i) a high level and low level policy form, each of which includes benefits substantially similar to other individual health insurance coverage offered by the health insurer in the District of Columbia, or (ii) policy forms with the largest and next to largest premium volume of all policy forms offered by the health insurer in the District of Columbia; and

(B) An election as to which methodology the health insurer will use to determine the weighted average valuation as defined in § 35-1021(45).

(3) An election made under this section shall be binding for a 2-year period. After the initial 2-year period, and for each subsequent 2-year period, a health insurer shall again make the elections required by this section.

(4) An election shall be made on a form and in a manner required by the Commissioner.

(5) The actuarial value of benefits provided under individual health insurance coverage shall be calculated based on a standardized population and a set of standardized utilization and cost factors.

(6) A health insurer shall submit any information the Commissioner may require to support and justify the health insurer's calculations of actuarial values.

(7) A health insurer shall issue the individual health benefit plan elected under this section to any eligible individual.

(8) A health insurer shall not impose any pre-existing condition provision on an eligible individual. (Apr. 13, 1999, D.C. Law 12-209, § 201, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1023. Special rules for network plans.

(a) A health insurer that offers health insurance coverage in the individual market may:

(1) Limit the individuals who may be enrolled under such coverage to those who live, reside, or work within the service area for such network plan; and

(2) Within the service area of such plan, deny such coverage to such individuals if the health insurer has demonstrated to the Commissioner that:

(A) It will not have the capacity to deliver services adequately to additional individual enrollees because of its obligations to existing group contract holders, enrollees, and enrollees covered under individual contracts; and

(B) It is applying this section uniformly to individuals without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(b) A health insurer, upon denying health insurance coverage in the District of Columbia in accordance with subsection (a)(2) of this section, may not offer coverage in the individual market within such service area for a period of 180 days after such coverage is denied. (Apr. 13, 1999, D.C. Law 12-209, § 202, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1024. Application of financial capacity limits.

(a) A health insurer may deny health insurance coverage in the individual market to an eligible individual if the health insurer has demonstrated to the satisfaction of the Commissioner that:

(1) It does not have the financial reserves necessary to underwrite additional coverage; and

(2) It is applying this section uniformly to all individuals in the individual market in the District of Columbia consistent with the laws of the District of Columbia and without regard to any health status-related factor of such individuals and without regard to whether the individuals are eligible individuals.

(b) A health insurer, upon denying individual health insurance coverage in the District of Columbia in accordance with subsection (a) of this section, may not offer such coverage in the individual market within the District of Columbia for a period of 180 days after the date such coverage is denied or until the health insurer has demonstrated to the satisfaction of the Commissioner that the health insurer has sufficient financial reserves to underwrite additional coverage, whichever is later. (Apr. 13, 1999, D.C. Law 12-209, § 203, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.
Emergency act amendments. — See notes to § 35-1021.
Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1025. Market requirements.

(a) The provisions of this chapter shall not be construed to require that a health insurer offering health insurance coverage only in connection with group health plans or through one or more bona fide associations, or both, offer such health insurance coverage in the individual market.

(b) A health insurer offering health insurance coverage in connection with group health plans under this subchapter shall not be deemed to be a health insurer offering individual health insurance coverage solely because such issuer offers a conversion policy.

(c) A health insurer offering individual health insurance coverage solely because such insurer offers any insurance coverage for children as a participant in a pilot program relating to insurance coverage for children shall not be deemed to be a health insurer offering individual health insurance coverage. (Apr. 13, 1999, D.C. Law 12-209, § 204, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.
Emergency act amendments. — See notes to § 35-1021.
Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1026. Renewability of individual health insurance coverage.

(a) Except as provided in this section, a health insurer that provides individual health insurance coverage shall renew or continue in force such coverage at the option of the individual.

(b) A health insurer may nonrenew or discontinue health insurance coverage of an individual in the individual market based on one or more of the following:

(1) The individual has failed to pay premiums or contributions in accordance with the terms of the health insurance coverage or the issuer has not received timely premium payments;

(2) The individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage;

(3) The insurer is ceasing to offer coverage in the individual market in accordance with this chapter;

(4) In the case of a health insurer that offers health insurance coverage in the individual market through a network plan, the individual no longer resides, lives, or works in the service area, or in an area for which the health insurer is authorized to do business, but only if such coverage is terminated under this section uniformly without regard to any health status-related factor of covered individuals; or

(5) In the case of health insurance coverage that is made available in the individual market only through one or more bona fide associations, the membership of the individual in the association (on the basis of which the

coverage is provided) ceases, but only if such coverage is terminated under this section uniformly without regard to any health status-related factor of covered individuals.

(c) *Requirements for uniform termination of coverage.* —

(1) *Discontinuance of a particular type of health insurance coverage.*

In any case in which a health insurer decides to discontinue offering a particular type of health insurance coverage offered in the individual market, coverage of such type may be discontinued by the health insurer only if:

(i) The health insurer provides notice to each covered individual provided coverage of this type in such market of such discontinuation at least 90 days prior to the date of the discontinuation of such coverage;

(ii) The health insurer offers to each individual in the individual market provided coverage of this type the option to purchase any other individual health insurance coverage currently being marketed by the health insurer for individuals in such market; and

(iii) In exercising the option to discontinue coverage of this type, and in offering the option of coverage under this subsection, the health insurer acts uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for such coverage.

(2) *Discontinuance of all coverage.*

(A) Subject to paragraph (1)(iii) of this subsection, in any case in which a health insurer elects to discontinue offering all health insurance coverage in the individual market in the District of Columbia, health insurance coverage may be discontinued by the health insurer only if:

(i) The health insurer provides notice to the Commissioner and to each individual of such discontinuation at least 180 days prior to the date of the expiration of such coverage, and

(ii) All health insurance issued or delivered for issuance in the District of Columbia in such market is discontinued and coverage under such health insurance coverage in such market is not renewed.

(B) In the case of discontinuation under paragraph (1) of this subsection in the individual market, the health insurer may not provide for the issuance of any health insurance coverage in the individual market in the District of Columbia during the 5-year period beginning on the date of the discontinuation of the last health insurance coverage not so renewed.

(d) At the time of coverage renewal, a health insurer may modify the health insurance coverage for a policy form offered to individuals in the individual market so long as such modification is consistent with the laws of the District of Columbia and effective on a uniform basis among all individuals with that policy form.

(e) In applying this section in the case of health insurance coverage that is made available by health insurers in the individual market to individuals only through one or more associations, a reference to an "individual" is deemed to include a reference to such an association of which the individual is a member. (Apr. 13, 1999, D.C. Law 12-209, § 205, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1027. Fair market provision.

The provisions of § 35-1037(j) shall apply to health insurance coverage offered by a health insurer in the individual market in the same manner as they apply to health insurance coverage offered by a health insurer in connection with a group health plan in the small or large group market. (Apr. 13, 1999, D.C. Law 12-209, § 206, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1028. Regulations establishing standards.

(a) The Commissioner may adopt regulations to enable him or her to establish and administer such standards relating to the provisions of this chapter as may be necessary to (i) implement the requirements of this chapter, and (ii) assure that the District of Columbia's regulation of health insurers is not preempted pursuant to the Health Insurance Portability and Accountability Act of 1996, approved August 21, 1996 (P. L. 104-191; 110 Stat. 1936).

(b) The Commissioner may revise or amend such regulations and may increase the scope of the regulations to the extent necessary to maintain federal approval of the District of Columbia's program for regulation of health insurers pursuant to the requirements established by the United States Department of Health and Human Services.

(c) The Commissioner shall annually advise the Committee on Consumer and Regulatory Affairs, or such other Council committee or committees having subject matter jurisdiction over health insurance, of revisions and amendments made pursuant to subsection (b) of this section. (Apr. 13, 1999, D.C. Law 12-209, § 207, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1029. Applicability.

Unless otherwise specifically provided in this chapter, the provisions of this subchapter shall apply to individual health benefit plans issued or renewed on or after January 1, 1998. (Apr. 13, 1999, D.C. Law 12-209, § 208, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1030. Construction.

Nothing in this subchapter shall be construed to:

(1) Restrict the amount of the premium rates that an issuer may charge an individual for health insurance coverage provided in the individual market; or

(2) Prevent a health insurer offering health insurance coverage in the individual market from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention. (Apr. 13, 1999, D.C. Law 12-209, § 209, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

Subchapter III. Group Insurance.

§ 35-1031. Application of subchapter.

This subchapter applies to health insurers offering group health insurance coverage. Each insurer proposing to issue group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis, each corporation providing group accident and sickness subscription contracts, and each health maintenance organization or multiple employer welfare arrangement providing health care plans for health care services that offers coverage to the group market in the District of Columbia shall be subject to the provisions of this subchapter if any of the following conditions are met:

(1) Any portion of the premiums or benefits is paid by or on behalf of the employer;

(2) The eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the employer, for any portion of the premium; or

(3) The health benefit plan is treated by the employer or any of the covered individuals as part of a plan or program for the purpose of section 106, 125, or 162 of the United States Internal Revenue Code. (Apr. 13, 1998, D.C. Law 12-209, § 301, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

References in text. — Sections 106, 125, and 126 of the United States Internal Revenue Code, referred to in (3), are 26 U.S.C.S. §§ 106, 125, and 126.

§ 35-1032. Availability of health benefit plans to small employers.

In order to ensure the broadest availability of health benefit plans to small employers, the Commissioner shall set market conduct and other require-

ments for health insurers, agents, and third-party administrators, including requirements relating to the following:

(1) Registration with the Commissioner by each group health insurer offering group health insurance coverage of its intention to offer health insurance coverage in the small group market under this subchapter;

(2) Publication by the Commissioner of a list of all health insurers who offer coverage in the small group market, including a potential requirement applicable to agents, third-party administrators, and health insurers that no health benefit plan may be sold to a small employer by a health insurer not identified as a health insurer in the small group market;

(3) The availability of a broadly publicized telephone number for the Department of Insurance and Securities Regulation for access by small employers to information concerning this subchapter; and

(4) Methods concerning periodic demonstration by health insurers offering group health insurance coverage that they are marketing and issuing health benefit plans to small employers. (Apr. 13, 1999, D.C. Law 12-209, § 302, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1033. Renewability.

(a) Every health insurer that offers health insurance coverage in the group market in the District of Columbia shall renew such coverage with respect to all insureds at the option of the employer except:

(1) For nonpayment of the required premiums by the policyholder or contract holder, or where the health insurer has not received timely premium payments;

(2) When the health insurer is ceasing to offer coverage in the small or large group market in accordance with paragraphs (9) and (10) of this subsection;

(3) For fraud or misrepresentation by the employer with respect to their coverage;

(4) With regard to coverage provided to an eligible employee, for fraud or misrepresentation by the employee with regard to his or her coverage;

(5) For failure to comply with contribution and participation requirements defined by the health benefit plan;

(6) For failure to comply with health benefit plan provisions that have been approved by the Commissioner;

(7) When a health insurer offers health insurance coverage in the group market through a network plan and there is no longer an enrollee in connection with such plan who lives, resides, or works in the service area of the health insurer (or in the area for which the health insurer is authorized to do business), and, in the case of the group market, the health insurer would deny enrollment with respect to such plan under the provisions of paragraphs (9) and (10) of this subsection;

(8) When health insurance coverage is made available in the group market only through one or more bona fide associations, the membership of an

employer in the association (on the basis of which the coverage is provided) ceases, but only if such coverage is terminated under this section uniformly without regard to any health status related factor relating to any covered individual;

(9) When a health insurer decides to discontinue offering a particular type of group health insurance coverage in the small or large group market in the District of Columbia, coverage of such type may be discontinued by the health insurer in accordance with the laws of the District of Columbia in such market only if the health insurer provides notice to each plan sponsor provided coverage of this type in such market (and participants and beneficiaries covered under such coverage) of such discontinuation at least 90 days prior to the date of the discontinuance; or

(10)(A) In any case in which a health insurer elects to discontinue offering all health insurance coverage in the small or large group market in the District of Columbia, health insurance coverage may be discontinued by the health insurer only in accordance with the laws of the District of Columbia and if:

(i) The health insurer provides notice to the Commissioner and to each plan sponsor (and participants and beneficiaries covered under such coverage) of such discontinuation at least 180 days prior to the date of the discontinuation of such coverage; and

(ii) All health insurance issued or delivered for issuance in the District of Columbia in such market (or markets) are discontinued and coverage under such health insurance coverage in such market (or markets) is not renewed.

(B) In the case of a discontinuation in the market, the health insurer may not provide for the issuance of any health insurance coverage in the market involved during the 5-year period beginning on the date of the discontinuance of the last health insurance coverage not so renewed.

(b) At the time of coverage renewal, a health insurer may modify the health insurance coverage for a product offered to a group health plan in the large group market, or, in the small group market if, for coverage that is available in such market other than only through one or more bona fide associations, such modification is consistent with the law of the District of Columbia and effective on a uniform basis among health insurers with that product. (Apr. 13, 1999, D.C. Law 12-209, § 303, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1034. Reference to plan sponsor.

In applying this subchapter in the case of health insurance coverage that is made available by a health insurer in the group market to employers only through one or more associations, a reference to "plan sponsor" is deemed, with respect to coverage provided to an employer member of the association, to include a reference to such employer. (Apr. 13, 1999, D.C. Law 12-209, § 304, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1035. Coverage.

If coverage to the small or large employer market pursuant to this subchapter ceases to be written, administered, or otherwise provided, such coverage shall continue to be governed by this subchapter with respect to business conducted under this subchapter that was transacted prior to the effective date of termination and that remains in force. (Apr. 13, 1999, D.C. Law 12-209, § 305, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1036. Availability.

(a) If coverage is offered to small employers under this subchapter, such coverage shall be offered and made available to every small employer that applies for such coverage. Participation in such plan shall be made available to all the eligible employees of a covered small employer and their dependents. No coverage may be offered to only certain eligible employees or their dependents and no employees or their dependents may be excluded or charged additional premiums because of health status.

(b) No coverage offered under this subchapter shall exclude an employer based solely on the nature of the employer's business.

(c) Subsection (a) of this section shall not apply to health insurance coverage offered by a health insurer if such coverage is made available in the small group market only through one or more bona fide associations.

(d) A health insurer that offers health insurance coverage in a small group market through a network plan may:

(1) Limit the employees that may apply for such coverage to those eligible individuals who live, work, or reside in the service area for such network plan; or

(2) Within the service area of such plan, deny such coverage to such employers if the health insurer has demonstrated, if required, to the satisfaction of the Commissioner that:

(A) It will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and

(B) It is applying this subdivision uniformly to all employers without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factors relating to such employees and dependents.

(e) A health insurer, upon denying health insurance coverage in the District of Columbia in accordance with subsection (d)(2) of this section, may not offer coverage in the small group market within such service area for a period of 180 days after the date such coverage is denied.

(f) A health insurer may deny health insurance coverage in the small group market if the health insurer has demonstrated, if required, to the satisfaction of the Commissioner that:

(1) It does not have the financial reserves necessary to underwrite additional coverage; and

(2) It is applying this subdivision uniformly to all employers in the small group market in the District of Columbia consistent with the laws of this District of Columbia and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to such employees and dependents.

(g)(1) No health insurer offering group health insurance coverage is required to offer coverage or accept applications pursuant to subsection (a) of this section if the Commissioner determines that acceptance of an application or applications would result in the health insurer being declared an impaired insurer.

(2) A health insurer offering group health insurance coverage that does not offer coverage pursuant to subsection (f) of this section may not offer coverage to small employers until the Commissioner determines that the health insurer is no longer impaired.

(h) A health insurer upon denying health insurance coverage in connection with group health plans in accordance with subsection (d) of this section in the District of Columbia may not offer coverage in connection with group health plans in the small group market for a period of 180 days after the date such coverage is denied or until the health insurer has demonstrated to the satisfaction of the Commissioner that the health insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.

(i)(1) Nothing in this chapter shall be construed to preclude a health insurer from establishing employer contribution rules or group participation rules in connection with a health benefit plan offered in the small group market.

(2) As used in this subchapter, the term "employer contribution rule" means a requirement relating to the minimum level or amount of employer contribution toward the premium for enrollment of eligible individuals, and the term "group participation rule" means a requirement relating to the minimum number of eligible employees that must be enrolled in relation to a specified percentage or number of eligible employees.

(3) Any employer contribution rule or group participation rule shall be applied uniformly among small employers without reference to the size of the small employer group, health status of the small employer group, or other factors.

(j)(1) A group health plan or health insurer offering group health insurance coverage that fails to fairly market to small employers as required by this section may not offer coverage in the District of Columbia to new small employers until the later of 180 days after the unfair marketing has been identified and proven to the Commissioner or the date on which the health insurer submits, and the Commissioner approves, a plan to fairly market to the health insurer's established geographic service area.

(2) No health maintenance organization is required to offer coverage or

accept applications pursuant to subsection (a) of this section in the case of any of the following:

(A) To small employers where the policy would not be delivered or issued for delivery in the health maintenance organization's approved service areas;

(B) To an employee where the employee does not reside or work within the health maintenance organization's approved service areas; or

(C) Within an area where the health maintenance organization demonstrates to the satisfaction of the Commissioner that it will not have the capacity within that area and its network of providers to deliver services adequately to the enrollees of those groups because of its obligations to existing group contract holders and enrollees.

(3) A health maintenance organization that does not offer coverage pursuant to this subsection may not offer coverage in the applicable area to new employer groups with more than 50 eligible employees until the later of 180 days after closure to new applications or the date on which the carrier health maintenance organization notifies the Commissioner that it has regained capacity to deliver services to small employers. (Apr. 13, 1999, D.C. Law 12-209, § 306, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1037. Limitation on preexisting condition exclusion period.

(a) Subject to subsection (b) of this section, a health insurer offering group health insurance coverage may, with respect to a participant or beneficiary, impose a preexisting limitation only if (i) such exclusion relates to a condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the 6-month period ending on the enrollment date, (ii) such exclusion extends for a period of not more than 12 months (or 18 months in the case of a late enrollee) after the enrollment date, and (iii) the period of any such preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage, if any, applicable to the participant or beneficiary as of the enrollment date.

(b)(1) Subject to paragraph (4) of this subsection, a group health plan, and a health insurer offering health insurance coverage, may not impose any preexisting condition exclusion in the case of an individual who, as of the last day of the 30-day period beginning with the date of birth, is covered under creditable coverage.

(2) Subject to paragraph (4) of this subsection, a group health plan, and a health insurer offering health insurance coverage, may not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

(3) A group health plan, and health insurer offering health insurance coverage, may not impose any preexisting condition exclusion relating to pregnancy as a preexisting condition.

(4) Paragraphs (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(c) A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a health benefit plan, if, after such period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.

(d) For purposes of subsections (b)(4) and (c) of this section, any period that an individual is in a waiting period for any coverage under a group health plan (or for group health insurance coverage), or is in an affiliation period, shall not be taken into account in determining the continuous period under subsection (c) of this section.

(e)(1) Except as otherwise provided under paragraph (2) of this subsection, a group health plan and a health insurer offering group health coverage shall count a period of creditable coverage without regard to the specific benefits covered during the period.

(2) A group health plan, or a health insurer offering group health insurance coverage, may elect to count a period of creditable coverage based on coverage of benefits within each of several classes or categories of benefits rather than as provided under paragraph (1) of this subsection. Such election shall be made on a uniform basis for all participants and beneficiaries. Under such election a group health plan or health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within such class or category.

(3) In the case of an election with respect to a group plan under paragraph (2) of this subsection (whether or not health insurance coverage is provided in connection with such plan), the plan shall:

(A) Prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made such election; and

(B) Include in such statements a description of the effect of this election.

(4) In the case of an election under paragraph (2) of this subsection with respect to health insurance coverage offered by a health insurer in the small or large group market, the health insurer shall:

(A) Prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made such election; and

(B) Include in such statements a description of the effect of such election.

(f) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (g) of this section or in such other manner as may be specified in federal regulations.

(g) A health insurer offering group health insurance coverage shall provide for certification of the period of creditable coverage:

(1) At the time an individual ceases to be covered under the plan or otherwise becomes covered under a COBRA continuation provision;

(2) In the case of an individual becoming covered under a COBRA continuation provision, at the time the individual ceases to be covered under such provision; and

(3) At the request, or on behalf of, an individual made not later than 24 months after the date of cessation of the coverage described in paragraphs (1) or (2) of this subsection, whichever is later. The certification under paragraph (1) of this subsection may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.

(h) In the case of an election described in subsection (e)(2) of this section by a group health insurer, if the group health plan or health insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under subsection (f) of this section:

(1) Upon request of such group health insurer, the entity which issued the certification provided by the individual shall promptly disclose to such requesting insurer information on coverage of classes and categories of health benefits available under such entity's plan or coverage; and

(2) Such entity may charge the requesting group health plan or health insurer for the reasonable cost of disclosing such information.

(i) A health insurer offering group health insurance coverage shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of such an employee if the dependent is eligible, but not enrolled, for coverage under such terms) to enroll for coverage as a late enrollee for coverage under the terms of the plan if each of the following conditions is met:

(1) The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent.

(2) The employee stated in writing at such time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or health insurer (if applicable) required such a statement at such time and provided the employee with notice of such requirement (and the consequences of such requirement) at such time.

(3) The employee's or dependent's coverage described in paragraph (1) of this subsection: (i) was under a COBRA continuation provision and the coverage under such provision was exhausted; or (ii) was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage (including as a result of legal separation, divorce, death, termination of employment, or reduction in the number of hours of employment) or employer contributions towards such coverage were terminated.

(4) Under the terms of the plan, the employee requests such enrollment not later than 30 days after the date of exhaustion of coverage described in paragraph (3)(i) of this subsection or termination of coverage or employer contribution described in paragraph (3)(ii) of this subsection.

(j) A health insurer is deemed to make coverage available with respect to a dependent of an individual if:

(1) The individual is a participant under the plan (or has met any waiting period applicable to becoming a participant under the plan and is eligible to be

enrolled under the plan but for a failure to enroll during a previous enrollment period); and

(2) A person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption, the group health insurer shall provide for a dependent special enrollment period during which the person (or, if not otherwise enrolled, the individual) may also be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may also be enrolled as a dependent of the individual if such spouse is otherwise eligible for coverage.

(k) A dependent special enrollment period under subsection (j) of this section shall be a period of not less than 30 days and shall begin on the later of the date dependent coverage is made available, or the date of the marriage, birth, or adoption or placement for adoption (as the case may be).

(l) If an individual seeks to enroll a dependent during the first 30 days of such a dependent special enrollment period, the coverage of the dependent shall become effective:

(1) In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;

(2) In the case of a dependent's birth, as of the date of such birth; or

(3) In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption. (Apr. 13, 1999, D.C. Law 12-209, § 307, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1038. Disclosure of information.

(a) Any health insurer offering health insurance coverage to a small employer shall make a reasonable disclosure of the availability of information to such an employer, as part of its solicitation and sales materials, and upon request of such an employer, information concerning:

(1) The provisions of such coverage concerning the health insurer's right to change premium rates and the factors that may affect changes in premium rates;

(2) The provisions of such coverage relating to renewability of coverage;

(3) The provisions of such coverage relating to any preexisting condition exclusion; and

(4) The benefits and premiums available under all health insurance coverage for which the employer is qualified.

(b) A health insurer is not required under this subchapter to disclose any information that is proprietary and trade secret information. (Apr. 13, 1999, D.C. Law 12-209, § 308, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1039. Eligibility to enroll.

(a) A group health plan, and a health insurer offering group health insurance coverage, may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any of the health status-related factors.

(b) The provisions of this section shall not be construed to:

(1) Require a health insurer offering group health insurance coverage to provide particular benefits other than those provided under the terms of such plan or coverage; or

(2) To prevent a health insurer offering group health insurance coverage from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage rules for eligibility to enroll under a plan which includes rules defining any applicable waiting periods for such enrollment.

(c) A health insurer offering group health insurance coverage may not require an individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater than such premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status related factor in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

(d) Nothing in subsection (c) of this section shall be construed to restrict the amount that an employee may be charged for coverage under group health insurance coverage, or prevent a health insurer offering group health insurance coverage from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention. (Apr. 13, 1999, D.C. Law 12-209, § 309, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1040. Exclusions.

The provisions of this subchapter shall not apply to:

(1) Any group health benefit plan for any plan year if, on the first day of such plan year, such plan has less than 2 participants who are current employees; or

(2) Any health benefit plan for any of the excepted benefits. (Apr. 13, 1999, D.C. Law 12-209, § 310, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1041. Rules used to determine group size.

(a) All employers treated as a single employer under subsection (b), (c), (m), or (o) of § 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414) shall be treated as one employer.

(b) In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small or large group employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(c) Any reference in this section to an employer shall include a reference to any predecessor of such employer. (Apr. 13, 1999, D.C. Law 12-209, § 311, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1042. Affiliation period.

(a) A health maintenance organization which does not impose any preexisting condition exclusion, with respect to any particular coverage option, may impose an affiliation period for such coverage option, but only if such period is applied uniformly without regard to any health status-related factors and such period does not exceed 2 months (or 3 months in the case of a late enrollee).

(b) An affiliation period as described in subsection (a) of this section shall begin on the enrollment date.

(c) An affiliation period under a plan shall run concurrently with any waiting period under the plan. (Apr. 13, 1999, D.C. Law 12-209, § 312, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1043. Alternative methods.

A health maintenance organization may use alternative methods to an affiliation period to address adverse selection provided that they are approved by the Commissioner prior to their use. (Apr. 13, 1999, D.C. Law 12-209, § 313, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

§ 35-1044. Applicability.

Unless otherwise specifically provided in this chapter, the provisions of this subchapter shall apply to group health benefit plans issued or renewed after July 1, 1997. (Apr. 13, 1999, D.C. Law 12-209, § 314, 45 DCR 8433.)

Temporary addition of chapter. — See note to § 35-1021.

Emergency act amendments. — See notes to § 35-1021.

Legislative history of Law 12-209. — See note to § 35-1021.

CHAPTER 12. FRATERNAL BENEFIT ASSOCIATIONS.

Sec.
35-1201 to 35-1228. [Repealed].

§ 35-1201. Definition; authorized benefits and funds; governing provisions.

Repealed.

(Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 749; Dec. 20, 1928, 45 Stat. 1055, ch. 40, § 1; 1973 Ed., § 35-901; Mar. 13, 1993, D.C. Law 9-181, § 2, 39 DCR 8081; Mar. 16, 1993, D.C. Law 9-193, § 2, 39 DCR 9009; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 35-1202. Authority of existing associations to continue business.

Repealed.

(Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 750; 1973 Ed., § 35-902; 1997, D.C. Law 11-268, § 10(n), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1203. Nonresident associations; filing requirements; required showing of authority; examinations.

Repealed.

(Mar. 3, 1901, 31 Stat. 1310, ch. 854, § 751; 1973 Ed., § 35-903; Mar. 21, 1995, D.C. Law 10-233, § 5, 42 DCR 24; 1997, D.C. Law 11-268, § 10(n), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1204. Required annual reports; contents.

Repealed.

(Mar. 3, 1901, 31 Stat. 1311, ch. 854, § 752; 1973 Ed., § 35-904; 1997, D.C. Law 11-268, § 10(n), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1205. Service of process on nonresident associations.

Repealed.

(Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 753; 1973 Ed., § 35-905; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1206. Issuance of permit to do business.

Repealed.

(Mar. 3, 1901, 31 Stat. 1312, ch. 854, § 754; 1973 Ed., § 35-906; June 14, 1994, D.C. Law 10-128, § 402(b), 41DCR 2096; 1997, D.C. Law 11-268, § 10(n), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

Legislative history of Law 12-261. — Law 12-261, the Second Omnibus Regulatory Reform Amendment Act of 1998, was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on and , respectively. Signed by the Mayor on , 1999, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 17, 1999.

Editor's notes. — D.C. Law 12-261 contained a conforming amendment for § 35-1206. As that section had prviously been repealed, the amendment was not implemented.

§ 35-1207. Formation procedure.

Repealed.

(Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 755; Oct. 5, 1962, 76 Stat. 752, Pub. L. 87-757, § 2; 1973 Ed., § 35-907; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1208. Reincorporation or continuance of powers of existing corporations.

Repealed.

(Mar. 3, 1901, 31 Stat. 1313, ch. 854, § 756; 1973 Ed., § 35-908; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1209. Incorporation of subordinate bodies.

Repealed.

(Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 757; 1973 Ed., § 35-909; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1210. Payment of assessments and/or dues by beneficiary.

Repealed.

(Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 758; 1973 Ed., § 35-910; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1211. Exemption of benefits from legal process.

Repealed.

(Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 759; 1973 Ed., § 35-911; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1212. Meetings.

Repealed.

(Mar. 3, 1901, 31 Stat. 1314, ch. 854, § 760; 1973 Ed., § 35-912; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1213. Fraudulent representations.

Repealed.

(Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 761; June 30, 1902, 32 Stat. 534, ch. 1329, § 761; 1973 Ed., § 35-913; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1214. Violations of provisions or injunction.

Repealed.

(Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 762; 1973 Ed., § 35-914; Oct. 5, 1985, D.C. Law 6-42, § 470(g), 32 DCR 4450; 1997, D.C. Law 11-268, § 10(n), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1215. Individual violations of provisions.

Repealed.

(Mar. 3, 1901, 31 Stat. 1315, ch. 854, § 763; 1973 Ed., § 35-915; Oct. 5, 1985, D.C. Law 6-42, § 470(h), 32 DCR 4450; 1997, D.C. Law 11-268, § 10, 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

Editor's notes. — Section 35-1215 was also amended by D.C. Law 12-81 to validate a previously made technical correction.

§ 35-1216. Exceptions for associations for profit, certain specified organizations.

Repealed.

(Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 764; Dec. 12, 1928, 45 Stat. 1021, ch. 24; 1973 Ed., § 35-916; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1217. Same — Associations or individuals using name of previously existing corporation.

Repealed.

(Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 765; 1973 Ed., § 35-917; Apr. 29, 1998, D.C. Law 12-86, § 1237(a), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1218. Insurance and/or annuities upon lives of children; applications.

Repealed.

(May 29, 1928, 45 Stat. 953, ch. 862, § 2; 1973 Ed., § 35-918; Apr. 29, 1998, D.C. Law 12-86, § 1237(b), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1219. Same — Computation of contributions.

Repealed.

(May 29, 1928, 45 Stat. 953, ch. 862, § 3; 1973 Ed., § 35-919; Apr. 29, 1998, D.C. Law 12-86, § 1237(b), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1220. Same — Required reserve.

Repealed.

(May 29, 1928, 45 Stat. 953, ch. 862, § 4; 1973 Ed., § 35-920; Apr. 29, 1998, D.C. Law 12-86, § 1237(b), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1221. Same — Powers of society.

Repealed.

(May 29, 1928, 45 Stat. 953, ch. 862, § 5; 1973 Ed., § 35-921; Apr. 29, 1998, D.C. Law 12-86, § 1237(b), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1222. Separation of fraternal and insurance activities; corporations affected.

Repealed.

(Apr. 12, 1930, 46 Stat. 158, ch. 135, § 1; 1973 Ed., § 35-922; 1997, D.C. Law 11-(Act 11-524), § 10(o), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1223. Same — Certificate of corporation to be filed; contents.

Repealed.

(Apr. 12, 1930, 46 Stat. 158, ch. 135, § 2; 1973 Ed., § 35-923; 1997, D.C. Law 11-(Act 11-524), § 10, 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

Editor's notes. — This section was also amended by D.C. Law 12-81 to validate previously made technical corrections.

§ 35-1224. Same — Approval and certificates of Commissioner required.

Repealed.

(Apr. 12, 1930, 46 Stat. 159, ch. 135, § 3; 1973 Ed., § 35-924; 1997, D.C. Law 11-(Act 11-524), § 10(o), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1225. Same — General powers, duties, liabilities and structure of activities.

Repealed.

(Apr. 12, 1930, 46 Stat. 159, ch. 135, § 4; 1973 Ed., § 35-925; 1997, D.C. Law 11-(Act 11-524), § 10, 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

Editor's notes. — This section was also amended by D.C. Law 12-81 to validate previously made technical corrections.

§ 35-1226. Same — Continuation and supervision of original corporation.

Repealed.

(Apr. 12, 1930, 46 Stat. 160, ch. 135, § 5; 1973 Ed., § 35-926; 1997, D.C. Law 11-(Act 11-524), § 10(o), 44 DCR 1730; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1227. Same — Existing contracts preserved; Congressional powers reserved.

Repealed.

(Apr. 12, 1930, 46 Stat. 160, ch. 135, § 6; 1973 Ed., § 35-927; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

§ 35-1228. Same — Applicability of state and District laws.

Repealed.

(Apr. 12, 1930, 46 Stat. 160, ch. 135, § 7; 1973 Ed., § 35-928; Apr. 29, 1998, D.C. Law 12-86, § 1237(c), 45 DCR 1223.)

Legislative history of Law 12-86. — See note to § 35-1201.

CHAPTER 12A. FRATERNAL BENEFIT SOCIETIES.

§ 35-1231. Definitions.

For the purposes of this title, the term:

(1) "Benefit contract" means the agreement for provision of benefits authorized by § 35-1243, as that agreement is described in § 35-1246(a).

(2) "Benefit member" means an adult member who is designated by the laws or rules of the society to be a benefit member under a benefit contract.

(3) "Certificate" means the document issued as written evidence of the benefit contract.

(4) "Commissioner" means the Commissioner of Insurance of the District of Columbia.

(5) "District" means the District of Columbia.

(6) "Fraternal benefit societies" means any incorporated society, order or supreme lodge, without capital stock, including one exempted under the provisions of § 35-1263(a)(2), whether incorporated or not, conducted solely for the benefit of its members and their beneficiaries and not for profit, operated on a lodge system with ritualistic form of work, having a representative form of government, and which provides benefits in accordance with this chapter.

(7) "Laws" means the society's articles of incorporation, charter, constitution and bylaws, however designated.

(8) "Lodge" means subordinate member units of the society, known as camps, courts, councils, branches or by any other designation.

(9) "Lodge System" means a society that has a supreme governing body and subordinate lodges into which members are elected, initiated, or admitted in accordance with its laws, rules, and rituals. Subordinate lodges shall be

required by the laws of the society to hold regular meetings periodically in furtherance of the purposes of the society. A society may, at its option, organize and operate lodges for children under the minimum age for adult membership, but membership and initiation in local lodges shall not be required of such children, nor shall they have a voice or vote in the management of the society.

(10) "Premiums" means premiums, rates, dues, or other required contributions by whatever name known, which are payable under the certificate.

(11) "Representative form of government" means a society in which:

(A) There is a supreme governing body constituted in one of the following ways:

(i) By assembly if the supreme governing body is composed of delegates elected directly by the members or at intermediate assemblies or conventions of members or their representatives, together with other delegates as may be prescribed in the society's laws. A society may provide for election of delegates by mail. The elected delegates shall constitute a majority in number and shall not have less than a majority of the votes and not less than the number of votes required to amend the society's laws. The assembly shall be elected and shall meet at least once every 4 years and shall elect a board of directors to conduct the business of the society between meetings of the assembly. Vacancies on the board of directors between elections may be filled in the manner prescribed by the society's laws; or

(ii) By direct election if the supreme governing body is a board composed of persons elected by the members, either directly or by their representatives in intermediate assemblies, and any other persons prescribed in the society's laws. A society may provide for election of the board by mail. Each term of a board member may not exceed 4 years. Vacancies on the board between elections may be filled in the manner prescribed by the society's laws. Those persons elected to the board shall constitute a majority in number and not less than the number of votes required to amend the society's laws. A person filling the unexpired term of an elected board member shall be considered to be an elected member. The board shall meet at least quarterly to conduct the business of the society;

(B) The officers of the society are elected either by the supreme legislative or governing body or by the board by whatever name known, as provided in the society's constitution and bylaws;

(C) The members, officers, representatives, or delegates shall not vote by proxy; and

(D) Only benefit members are eligible for election to the supreme governing body, the board of directors or any intermediate assembly.

(12) "Rules" means all rules, regulations, or resolutions adopted by the supreme governing body or board of directors which are intended to have general application to the members of the society.

(13) "Society" means fraternal benefit society, unless otherwise indicated. (Apr. 29, 1998, D.C. Law 12-86, § 1202, 45 DCR 1172.)

Cross references. — As to exceptions to chapter, see §§ 35-1216 and 35-1217.

As to insurance on lives of children, see §§ 35-1218 to 35-1221.

As to separation of insurance and fraternal activities, see §§ 35-1222 to 35-1228.

As to inspection and examination of insurance companies, see §§ 35-108, 35-201, 35-202, 35-418, and 35-1513.

As to authority of Council to regulate, modify,

or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

As to exemption of fraternal benefit associations from provision of general law governing taxes and license fees for insurance companies, see § 47-2611.

As to authority of Council to regulate, modify, or eliminate license requirements and to promulgate regulations, see §§ 47-2842 and 47-2844.

As to quo warranto proceedings to question right to corporate rights and franchises, see § 16-3501 et seq.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Fraternal Benefit Societies Act of 1998. — Section 1201 of D.C. Law 12-86 provided that Title XII of the act may be cited as the "Fraternal Benefit Societies Act of 1998."

§ 35-1232. Operation for benefit of members and their beneficiaries; bylaws.

(a)(1) A society shall operate for the benefit of its members and their beneficiaries by:

(A) Providing benefits as specified in § 35-1243; and

(B) Operating for one or more social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purposes for the benefit of its members, which may also be extended to others.

(2) The purposes of paragraph (2) of this subsection may be carried out directly by the society, or indirectly through subsidiary corporations or affiliated organizations.

(b) Every society shall have the power to adopt laws and rules for the government of the society, the admission of its members, and the management of its affairs. It shall have the power to change, alter, add to, or amend such laws and rules and shall have other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. (Apr. 29, 1998, D.C. Law 12-86, § 1203, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1233. Qualifications for membership.

(a) A society shall specify in its laws or rules:

(1) Eligibility standards for each class of membership, provided that if benefits are provided on the lives of children, the minimum age for adult membership shall be set at not less than age 15 and not greater than age 21;

(2) The process for admission to membership for each membership class; and

(3) The rights and privileges of each membership class, provided that only benefit members shall have the right to vote on the management of the insurance affairs of the society.

(b) A society may also admit social members who shall have no voice or vote in the management of the insurance affairs of the society.

(c) Membership rights in the society are personal to the member and are not assignable. (Apr. 29, 1998, D.C. Law 12-86, § 1204, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1234. Location of office.

(a) The principal office of any domestic society shall be located in the District. The meetings of its supreme governing body may be held in any state, district, province, or territory wherein such society has at least one subordinate lodge, or in any other location as determined by the supreme governing body, and all business transacted at the meetings shall be as valid in all respects as if the meetings were held in the District. The minutes of the proceedings of the supreme governing body and of the board of directors shall be in the English language.

(b)(1) A society may provide in its laws for an official publication in which any notice, report, or statement required by law to be given to members, including notice of election, may be published. The required reports, notices, and statements shall be printed conspicuously in the publication. If the records of a society show that 2 or more members have the same mailing address, an official publication mailed to one member is deemed to be mailed to all members at the same address unless a member requests a separate copy.

(2) Not later than June 1st of each year, a synopsis of the society's annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society or, in lieu thereof, the synopsis may be published in the society's official publication.

(c) A society may provide in its laws or rules for grievance or complaint procedures for members. (Apr. 29, 1998, D.C. Law 12-86, § 1205, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1235. Liability of officers and members.

(a) The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

(b) Any person may be indemnified and reimbursed by any society for expenses reasonably incurred by, and liabilities imposed upon, such person in connection with or arising out of any action, lawsuit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that he or she is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which he or she served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed:

(1) In relation to any matter in such action, lawsuit, or proceeding as to which he or she shall finally be adjudged to be, or have been guilty of, breach of a duty as a director, officer, employee or agent of the society; or

(2) In relation to any matter in such action, lawsuit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement.

(c) A society may indemnify or reimburse a person in relation to any matter specified in subsection (b)(1) and (2) of this section if the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his or her conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in subsection (b)(1) and (2) of this section may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, lawsuit, or proceeding or by a court of competent jurisdiction. The termination of any action, lawsuit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement.

(d) The right to indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of his or her heirs, executors, and administrators.

(e) A society shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against such person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

(f) No director, officer, employee, member, or volunteer of a society serving without compensation, shall be liable, and no cause of action may be brought, for damages resulting from the exercise of judgment or discretion in connection with the duties or responsibilities of such person for the society unless such act or omission involved willful or wanton misconduct. (Apr. 29, 1998, D.C. Law 12-86, § 1206, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1236. Waiver of laws.

The laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions of the laws of the society. Such provision shall be binding on the society and every member and beneficiary of a member. (Apr. 29, 1998, D.C. Law 12-86, § 1207, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1237. Organization of societies.

(a) A domestic society organized on or after the effective date of this act shall be formed as follows:

(1) Seven or more citizens of the United States, a majority of whom are residents of the District, who desire to form a fraternal benefit society may make, sign, and acknowledge, before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(A) The proposed corporate name of the society, which shall not resemble the name of any society or insurance company already authorized to transact business in the District so as to be misleading or confusing;

(B) The place where its principal office shall be located within the District;

(C) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. Such purposes shall not include more liberal powers than are granted by this chapter; and

(D) The names and residences of the incorporators and the names, residences, and official titles of all the officers, trustees, directors, or other persons who will manage the affairs and funds of the society for the first year or until the ensuing election, at which all such officers shall be elected by the supreme governing body. The ensuing election shall be held no later than one year from the date of issuance of the permanent certificate of authority.

(2) Duplicate originals of the articles of incorporation, certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications and rates therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one year shall be filed with the Commissioner, who may require such further information as the Commissioner deems necessary. The bond with sureties approved by the Commissioner shall be in such amount, not less than $50,000, nor more than $500,000, as required by the Commissioner. All documents filed are to be in the English language. If the Commissioner finds that the purposes of the society conform to the requirements of this chapter and all provisions of the law have been complied with, the Commissioner shall approve the articles of incorporation and issue the incorporators a preliminary certificate of authority authorizing the society to solicit members as hereinafter provided.

(b) No preliminary certificate of authority granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the Commissioner upon cause shown, unless the 100 applicants hereinafter required have been secured and the organization has been completed as herein provided. The charter and all other proceedings thereunder shall become null and void in one year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business as hereinafter provided.

(c) Upon receipt of a preliminary certificate of authority from the Commissioner, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one

regular monthly premium in accordance with its table of rates, and shall issue to each such applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of such advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:

(1) Actual bona fide applications for benefits have been secured aggregating at least $100,000 on not less than 100 applicants, and any necessary evidence of insurability has been furnished to and approved by the society;

(2) At least 5 subordinate lodges have been established into which the 100 applicants have been admitted;

(3) There has been submitted to the Commissioner, under oath of the president or secretary, or corresponding officer of the society, a list of such applicants, giving their names, addresses, date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted, and premiums therefor; and

(4) It shall have been shown to the Commissioner, by sworn statement of the treasurer, or corresponding officer of such society, that at least 100 applicants have each paid in cash at least one regular monthly premium as herein provided, which premiums in the aggregate shall amount to at least $50,000. Advance premiums shall be held in trust during the period of organization. If the society has not qualified for a certificate of authority within one year, as herein provided, advance premiums shall be returned to applicants.

(d) The Commissioner may make such examination and require such further information as the Commissioner deems necessary. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the Commissioner shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of this chapter. The certificate of authority shall be prima facie evidence of the existence of the society at the date of such certificate of authority to be made and filed with the Recorder of Deeds of the District. A certified copy of such record may be given in evidence with like effect as the original certificate of authority.

(e) Any incorporated society authorized to transact business in the District at the time this chapter becomes effective shall not be required to reincorporate.

(f) No unincorporated or voluntary association shall be permitted to transact business in the District as a fraternal benefit society. (Apr. 29, 1998, D.C. Law 12-86, § 1208, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1238. Laws; amendments.

(a) A domestic society may amend its laws in accordance with the provisions of its laws by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or

by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within 6 months from the date of submission, a majority of the members voting shall have signified their consent to such amendment by one of the methods herein specified. Any such amendment shall be filed with the Commissioner.

(b) Within 90 days from the filing of any such amendment, a copy or synopsis thereof shall be furnished to all members of the society either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis thereof, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that the amendments or synopsis, have been furnished to the addressee.

(c) Every foreign or alien society authorized to do business in the District shall file with the Commissioner a duly certified copy of all amendments of, or additions to, its laws within 90 days after enactment.

(d) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. (Apr. 29, 1998, D.C. Law 12-86, § 1209, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1239. Operations of nonprofit institutions.

A society may create, maintain, and operate, or may establish organizations to operate, not-for-profit institutions to further the purposes permitted by § 35-1232(a)(2). Such institutions may furnish services free of charge or at a reasonable charge. Any real or personal property owned, held, or leased by the society for this purpose shall be reported in every annual statement. (Apr. 29, 1998, D.C. Law 12-86, § 1210, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1240. Reinsurance.

A domestic society may enter into reinsurance transactions only in accordance with Chapter 33 of Title 35. Notwithstanding that law, a society may reinsure the risks of another society in a consolidation or merger approved by the Commissioner under § 35-1241. (Apr. 29, 1998, D.C. Law 12-86, § 1211, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1241. Consolidations and mergers.

A domestic society may enter into agreements of consolidation or merger in accordance with § 35-640. (Apr. 29, 1998, D.C. Law 12-86, § 1212, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1242. Conversion of fraternal benefit society into a mutual life insurance company.

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the applicable requirements of the laws of the District with respect to similar mutual legal reserve life insurance corporations if the plan of conversion has been approved by the Commissioner. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of ⅔ of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of the plan. No such conversion shall take effect unless approved by the Commissioner who may grant approval if the Commissioner finds that the proposed change is in conformity with the requirements of law and not prejudicial. (Apr. 29, 1998, D.C. Law 12-86, § 1213, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1243. Benefits.

(a) A society may provide the following contractual benefits in any form:

(1) Death benefits;

(2) Endowment benefits;

(3) Annuity benefits;

(4) Temporary or permanent disability benefits;

(5) Hospital, medical, or nursing benefits;

(6) Monument or tombstone benefits to the memory of deceased members; and

(7) Such other benefits as authorized for life insurers and which are not inconsistent with this chapter.

(b) A society shall specify in its rules those persons who may be issued, or covered by, the contractual benefits in subsection (a) of this section, consistent with providing benefits to members and their dependents. A society may provide benefits on the lives of children under the minimum age for adult membership upon application of an adult person. (Apr. 29, 1998, D.C. Law 12-86, § 1214, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1244. Beneficiaries.

(a) The owner of a benefit contract shall have the right at all times to change the beneficiary or beneficiaries in accordance with the laws or rules of the society unless the owner waives this right by specifically requesting in writing that the beneficiary designation be irrevocable. A society may, through its laws or rules, limit the scope of beneficiary designations and shall provide that no revocable beneficiary shall have or obtain any vested interest in the proceeds

of any certificate until the certificate has become due and payable in conformity with the provisions of the benefit contract.

(b) A society may make provision for the payment of funeral benefits to the extent the portion of any payment under a certificate as might reasonably appear to be due to any person equitably entitled thereto by reason of having incurred expense occasioned by the burial of the member. The portion so paid shall not exceed $2,000.

(c) If, at the death of any person insured under a benefit contract, there is no lawful beneficiary to whom the proceeds shall be payable, the amount of the benefit, except to the extent that funeral benefits may be paid as provided in subsection (b) of this section, shall be payable to the estate of the deceased insured in the same manner as other property not exempt. If the owner of the certificate is other than the insured, the proceeds shall be payable to the owner. (Apr. 29, 1998, D.C. Law 12-86, § 1215, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1245. Benefits not attachable.

No money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any society, shall be liable to attachment, garnishment, or other process, or to be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment by the society. (Apr. 29, 1998, D.C. Law 12-86, § 1216, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1246. Benefit contracts.

(a) Every society authorized to do business in the District shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided thereby. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each thereof, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.

(b) Any changes, additions, or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions, or amendments had been made prior to, and were in force at the time of, the application for insurance. No change, addition, or amendment shall destroy or diminish

benefits which the society contracted to give the owner as of the date of issuance.

(c) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.

(d) A society shall provide in its laws that if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require the owner to pay to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made either: (i) it shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or (ii) in lieu of or in combination with clause (i), the owner may accept a proportionate reduction in benefits under the certificate. The society may specify the manner of the election and which alternative is to be presumed if no election is made.

(e) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received in evidence of the terms and conditions thereof.

(f) No certificate shall be delivered or issued for delivery in the District unless a copy of the form has been filed with the Commissioner in the manner provided for like policies issued by life, accident, and health insurers in the District. Any certificate issued prior to one year after April 29, 1998 shall conform to the requirements provided by the laws applicable immediately prior to April 29, 1998. Every life, accident and health or disability insurance certificate and every annuity certificate issued on or after one year from April 29, 1998 shall meet the standard contract provision requirements not inconsistent with this chapter for like policies issued by life, accident, and health insurers in the District, except that a society may provide for a grace period for payment of premiums of one full month in its certificates. The certificate shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that a member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.

(g) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control of ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of the certificates and all rights, obligations, and liabilities incident thereto and connected therewith. Ownership rights prior to the transfer shall be specified in the certificate.

(h) A society may specify the terms and conditions on which benefit contracts may be assigned. (Apr. 29, 1998, D.C. Law 12-86, § 1217, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1247. Nonforfeiture benefits, cash surrender values, certificate loans, and other options.

(a) For certificates issued prior to one year after April 29, 1998, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall comply with the provisions of law applicable immediately prior to April 29, 1998.

(b) For certificates issued on or after one year from April 29, 1998 for which reserves are computed on the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Mortality Table, or any more recent table made applicable to life insurers, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan, or other option granted shall not be less than the corresponding amount ascertained in accordance with the laws of the District applicable to life insurers issuing policies containing like benefits based upon such tables. (Apr. 29, 1998, D.C. Law 12-86, § 1218, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1248. Investments.

A domestic society shall invest its funds only in investments authorized by the laws of the District for the investment of assets of life insurers and subject to the limitations therein. Any foreign or alien society permitted or seeking to do business in the District which invests its funds in accordance with the laws of the state, district, territory, country or province in which it is incorporated, shall be held to meet the requirements of this section for the investment of funds. (Apr. 29, 1998, D.C. Law 12-86, § 1219, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1249. Funds.

(a) All assets shall be held, invested and disbursed for the use and benefit of the society and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment on the surrender of any part thereof, except as provided in the benefit contract.

(b) A society may create, maintain, invest, disburse and apply any special fund or funds necessary to carry out any purpose permitted by the laws of the society.

(c) A society may, pursuant to resolution of its supreme governing body, establish and operate one or more separate accounts and issue contracts on a

variable basis, subject to the provisions of law regulating life insurers establishing such accounts and issuing such contracts. To the extent the society deems it necessary in order to comply with any applicable federal or state laws, or any rules issued thereunder, the society may adopt special procedures for the conduct of the business and affairs of a separate account, may, for persons having beneficial interests therein, provide special voting and other rights, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of certified public accountants, and selection of a committee to manage the business and affairs of the account, and may issue contracts on a variable basis which § 35-1246(b) and (d) shall not apply. (Apr. 29, 1998, D.C. Law 12-86, § 1220, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1250. Taxation.

Every society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax other than taxes on real estate and office equipment. (Apr. 29, 1998, D.C. Law 12-86, § 1221, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1251. Applicability of provisions.

Except as herein provided, societies shall be governed by this chapter and shall be exempt from all other provisions of the insurance laws of the District unless they are expressly designated therein, or unless they are specifically made applicable by this chapter. (Apr. 29, 1998, D.C. Law 12-86, § 1222, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1252. Valuation standards for certificates.

(a) Standards of valuation for certificates issued prior to one year after April 29, 1998 shall be those provided by the laws applicable immediately prior to April 29, 1998.

(b)(1) The minimum standards of valuation for certificates issued on or after one year from April 29, 1998 shall be based on the following tables:

(A) For certificates of life insurance, the Commissioner's 1941 Standard Ordinary Mortality Table, the Commissioner's 1941 Standard Industrial Table, the Commissioner's 1958 Standard Ordinary Mortality Table, the Commissioner's 1980 Standard Mortality Table, or any more recent table made applicable to life insurers in the District; and

(B) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits, and for noncancelable

accident and health benefits, such tables as are authorized for use by life insurers in the District.

(2) The valuation methods and standards (including interest assumptions) set forth in paragraph (1) of this subsection shall be in accordance with the laws of the District applicable to life insurers issuing policies containing like benefits.

(c) The Commissioner may, in his or her discretion, accept other standards for valuation if the Commissioner finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The Commissioner may, in his or her discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in the District.

(d) Any society, with the consent of the Commissioner of the state of domicile of the society and under such conditions, if any, which the Commissioner may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby. (Apr. 29, 1998, D.C. Law 12-86, § 1223, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1253. Reports.

(a) Every society transacting business in the District shall annually, on or before March 1, unless for cause shown the time has been extended by the Commissioner, file with the Commissioner a true statement of its financial condition, transactions, and affairs for the preceding calendar year and pay a filing fee of $50. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the Commissioner.

(b) As part of the annual statement, each society shall, on or before March 1, file with the Commissioner a valuation of its certificates in force on the preceding December 31. The Commissioner may, in his or her discretion for cause shown, extend the time for filing the valuation for not more than 2 calendar months. The valuation shall be done in accordance with the standards specified in § 35-1252. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.

(c) A society neglecting to file the annual statement in the form and within the time provided by this section shall forfeit $100 for each day during which the neglect continues, and, upon notice by the Commissioner to that effect, its authority to do business in the District shall cease while the default continues. (Apr. 29, 1998, D.C. Law 12-86, § 1224, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1254. Annual license.

Societies which are now authorized to transact business in the District, and all societies hereafter licensed, may continue such business until March 1 next succeeding April 29, 1998. The authority of the societies and all societies hereafter licensed, may thereafter be renewed annually, but in all cases to terminate on the succeeding March 1. However, a license so issued shall continue in full force and effect until a renewal of the license has been specifically refused. For each such license or renewal the society shall pay the Commissioner a fee of $50. A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. (Apr. 29, 1998, D.C. Law 12-86, § 1225, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1255. Examination of societies; no adverse publications.

(a) The Commissioner, or any person he or she may appoint, may examine any domestic, foreign, or alien society transacting or applying for admission to transact business in the District in the same manner as authorized for examination of domestic, foreign, or alien insurers. Requirements of notice and an opportunity to respond before findings are made public as provided in the laws regulating insurers shall also be applicable to the examination of societies.

(b) The expense of each examination and of each valuation, including compensation and actual expense of examiners, shall be paid by the society examined or whose certificates are valued, upon statements furnished by the Commissioner. (Apr. 29, 1998, D.C. Law 12-86, § 1226, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1256. Foreign or alien society; admission.

No foreign or alien society shall transact business in the District without a certificate of authority issued by the Commissioner in accordance with §§ 35-701 and 35-702 and § 35-1525. (Apr. 29, 1998, D.C. Law 12-86, § 1227, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1257. Injunction; liquidation; receivership of domestic society.

(a) When the Commissioner, upon investigation, finds that a domestic society has exceeded its powers; has failed to comply with any provision of this chapter; is not fulfilling its contracts in good faith; has a membership of less than 90 after an existence of one year or more; or is conducting business

fraudulently or in a manner hazardous to its members, creditors, the public, or the business, the Commissioner shall notify the society of such deficiency and state in writing the reasons for his or her dissatisfaction. The Commissioner shall immediately issue a written notice to the society requiring that the deficiency be corrected. After such notice the society shall have a 30-day period in which to comply with the Commissioner's request for correction. If the society fails to comply, the Commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in quo warranto should not be commenced against the society.

(b) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the Commissioner may present the facts relating thereto to the Corporation Counsel of the District who shall, if he or she deems the circumstances warrant, commence an action to enjoin the society from transacting business or in quo warranto.

(c) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until the:

(1) Commissioner finds that the violation complained of has been corrected;

(2) Costs of such action shall have been paid by the society if the court finds that the society was in default as charged;

(3) Court has dissolved its injunction; and

(4) Commissioner has reinstated the certificate of authority.

(d) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed immediately to take possession of the books, papers, money, and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(e) No action under this section shall be recognized in any court of the District unless brought by the Corporation Counsel upon request of the Commissioner. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the Commissioner as such receiver.

(f) The provisions of this section relating to hearing by the Commissioner, action by the Corporation Counsel at the request of the Commissioner, hearing by the court, injunction and receivership shall be applicable to a society which voluntarily determines to discontinue business. (Apr. 29, 1998, D.C. Law 12-86, § 1228, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1258. Suspension; revocation or refusal of license of foreign or alien society.

(a) When the Commissioner, upon investigation, finds that a foreign or alien society transacting or applying to transact business in the District has exceeded its powers; has failed to comply with any of the provisions of this chapter; is not fulfilling its contracts in good faith; or is conducting its business fraudulently or in a manner hazardous to its members, creditors, or the public, the Commissioner shall notify the society of the deficiency or deficiencies and state in writing the reasons for his or her dissatisfaction. The Commissioner shall immediately issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After the notice, the society shall have a 30-day period in which to comply with the Commissioner's request for correction. If the society fails to comply, the Commissioner shall notify the society of the findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked, or refused.

(b) If on such date the society does not present good and sufficient reason why its authority to do business in the District should not be suspended, revoked, or refused, the Commissioner may suspend or refuse the license of the society to do business in the District until satisfactory evidence is furnished to the Commissioner that such suspension or refusal should be withdrawn or the Commissioner may revoke the authority of the society to do business in the District.

(c) Nothing contained in this section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in the District during the time such society was legally authorized to transact business herein. (Apr. 29, 1998, D.C. Law 12-86, § 1229, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1259. Injunction.

No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of the District unless made by the Corporation Counsel upon request of the Commissioner. (Apr. 29, 1998, D.C. Law 12-86, § 1230, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1260. Licensing of agents.

(a) Agents of societies shall be licensed in accordance with the provisions of the laws regulating the licensing, revocation, suspension, or termination of license of resident and nonresident agents. No written or other examination shall be required of a person who is certified by a society as having been its full-time agent prior to the effective date of this act.

(b) No examination or license shall be required of any regular salaried officer, employee, or member of a licensed society who devotes substantially all of his or her services to activities other than the solicitation of fraternal

insurance contracts from the public, and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

(c) Any agent, representative, or member of a society who devotes, or intends to devote, less than 50% of such person's time to the solicitation and procurement of insurance contracts for such society shall be exempt from the requirements of subsection (a) of this section. Any person who, in the preceding calendar year, has received or will receive a commission or other compensation for soliciting and procuring the type of contracts listed in paragraphs (1) through (5) of this subsection on behalf of an individual society, shall be presumed to be devoting, or intending to devote, 50% of the person's time to the solicitation or procurement of insurance contracts for such society:

(1) Life insurance contracts that, in the aggregate, exceed $200,000 of coverage for all lives insured for the preceding calendar year;

(2) A permanent life insurance contract offering more than $10,000 of coverage on an individual life;

(3) A term life insurance contract offering more than $50,000 of coverage on an individual life;

(4) Any insurance contracts other than life that the fraternal benefit society may write that insure the individual lives of more than 23 individuals; or

(5) Any variable life insurance or variable annuity contract. (Apr. 29, 1998, D.C. Law 12-86, § 1231, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1261. Unfair methods of competition; unfair and deceptive acts and practices.

Every society authorized to do business in the District and its agents shall be subject to the provisions of law applicable to life, accident, and health insurers relating to unfair and deceptive practices; provided, however, that nothing in such provisions shall be construed as applying to or affecting the right of any society to determine its eligibility requirements for membership, or be construed as applying to or affecting the offering of benefits exclusively to members or persons eligible for membership in the society by a subsidiary corporation or affiliated organization of the society. (Apr. 29, 1998, D.C. Law 12-86, § 1232, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1262. Penalties.

(a) Any person who makes a false or fraudulent statement in or relating to an application for membership or for the purpose of obtaining money from a benefit in any society shall, upon conviction, be fined not less than $100 nor more than $5,000 or be subject to imprisonment not less than 30 days nor more than one year, or both.

(b) Any person who solicits membership for, or in any manner assists in procuring membership in, any society not licensed to do business in the District shall, upon conviction thereof, be punished by a fine of not less than $50 nor more than $200, or by imprisonment for not less than 30 days nor more than one year, or both, in the discretion of the court.

(c) Any person convicted of a willful violation of, or neglect or refusal to comply with, any provision of this chapter for which a penalty is not otherwise prescribed shall, upon conviction, be punished by a fine not exceeding $5,000.

(d) Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of an insured for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties prescribed by law. (Apr. 29, 1998, D.C. Law 12-86, § 1233, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1263. Exemption of certain societies.

(a) Nothing contained in this chapter shall be construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders, or associations now doing business in the District which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies, or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies, or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than $700 or disability benefits of not more than $650 to any person in any one year, or both;

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than $400 or for disability benefits of not more than $350 to any one person in any one year, or both; or

(5) Grand or subordinate lodges of the Independent Order of Odd Fellows, nor any grand or subordinate lodge, or other body of Free and Accepted Masons, the National Council or any subordinate council of the Junior Order United American Mechanics, the National Council or any subordinate council of the Daughters of America, the Supreme Council of the Knights of Columbus or any subordinate council thereof, or similar orders, associations, or societies that do not have as their principal object the issuance of benefit certificates of membership in case of death or the payment of sick, funeral, or death benefits exceeding in amount $100.

(b) Any such society or association described in subsection (a)(3) or (4) of this section which provides for death or disability benefits for which benefit

certificates are issued, and any such society or association included in subsection (a)(4) of this section which has more than 1000 members, shall not be exempted from the provisions of this chapter but shall comply with all requirements thereof.

(c) No society which is exempt from the requirements of this chapter, except any society described in subsection (a)(2) of this section, shall give or allow, or promise to give or allow, to any person any compensation for procuring new members.

(d) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this chapter except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(e) The Commissioner may require from any society or association, by examination or otherwise, such information as will enable the Commissioner to determine whether the society or association is exempt from the provisions of this chapter.

(f) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of the District. (Apr. 29, 1998, D.C. Law 12-86, § 1234, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1264. Review.

All decisions and findings of the Commissioner made under the provisions of this chapter shall be subject to review as provided by the District of Columbia Administrative Procedure Act. (Apr. 29, 1998, D.C. Law 12-86, § 1235, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

§ 35-1265. Severability.

If any provision of this chapter or the application of such provision to any circumstance is held invalid, the remainder of this chapter or the application of the provision to other circumstances, shall not be affected thereby. (Apr. 29, 1998, D.C. Law 12-86, § 1236, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 35-1231.

CHAPTER 14. MARINE INSURANCE.

§ 35-1403. Kinds of insurance authorized; reserves required; requirements for transacting business for stock companies and reinsurance corporations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 28(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (a)(9)(A).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1998, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-1413. Single annual license fee.

(a) In lieu of all other license fees every company writing marine insurance in the District shall pay a single annual fee equal to $100 if the assets of the company aggregate $1,000,000 or under, to $150 if the assets aggregate over $1,000,000 and do not exceed $5,000,000, and to $200 if the assets exceed $5,000,000. The manner and time of paying this single fee and its remittance to the Collector of Taxes shall be the same as prescribed under § 35-1409 for the payment of taxes on underwriting profit.

(b) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Mar. 4, 1922, 42 Stat. 408, ch. 93, title 5, § 13; 1973 Ed., § 35-1113; Apr. 20, 1999, D.C. Law 12-261, § 2003(hh), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 35-1419. Acquisition, use and disposition of real estate by domestic companies.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 28(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-1403.

§ 35-1425. Licensees to maintain office and keep records; contents, inspection and confidentiality of records; violations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 28(c), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-1403.

§ 35-1427. Companies to keep classified records; violations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 28(d), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-1403.

CHAPTER 15. FIRE, CASUALTY, AND MARINE INSURANCE.

Subchapter I. General Provisions.

Subchapter II. Insurance Premium Finance Companies.

Subchapter I. General Provisions.

§ 35-1514. Kinds of insurance authorized.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 29(a), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (1).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1998, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-1519. Acquisition, use and disposition of real estate by domestic companies.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 29(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-1514.

§ 35-1545. License fees.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 29(c), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (a)(6).

Legislative history of Law 12-81. — See note to § 35-1514.

Subchapter II. Insurance Premium Finance Companies.

§ 35-1552. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 29(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (3).

Legislative history of Law 12-81. — See note to § 35-1514.

§ 35-1553. Licenses — Persons required to obtain; fees; other requirements.

* * * * *

(d) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Oct. 9, 1940, ch. 792, ch. III, § 53; Apr. 18, 1966, 80 Stat. 126, Pub. L. 89-403, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); 1973 Ed., § 35-1363; June 14, 1994, D.C. Law 10-128, § 403(b), 41 DCR 2096; May 21, 1997, D.C. Law 11-268, § 10(r)(3), 44 DCR 1730; Apr. 20, 1999, D.C. Law 12-261, § 2003(ii), 46 DCR 3142.)

Effect of amendments. — D.C. Law 11-268 substituted "Commissioner" for "Superintendent" throughout the section.

D.C. Law 12-261 added (d).

Legislative history of Law 11-268. — See note to § 35-1503.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998", was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 35-1554. Same — Issuance or renewal.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 29(e), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (a) and in the introductory paragraph of (b).

Legislative history of Law 12-81. — See note to § 35-1514.

CHAPTER 17. REGULATION OF CASUALTY AND OTHER INSURANCE RATES.

Sec.
35-1704. Filing requirements of individual companies; adjustment of rates; removal of discriminations.
35-1706. Filing requirements of organizations of companies; unfair practices; supervision of rating organizations.
35-1710. Judicial proceedings to contest actions of Commissioner.

§ 35-1704. Filing requirements of individual companies; adjustment of rates; removal of discriminations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 30(a), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (c).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-1706. Filing requirements of organizations of companies; unfair practices; supervision of rating organizations.

* * * * *

(c)

* * * * *

(5) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

* * * * *

(Apr. 20, 1999, D.C. Law 12-261, § 2003(jj), 46 DCR 3142.)

Effect of amendments.

D.C. Law 11-268 substituted "Commissioner" for "Superintendent" throughout the section.

D.C. Law 12-261 added (c)(5).

Legislative history of Law 11-268. — See note to § 35-1701.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 35-1710. Judicial proceedings to contest actions of Commissioner.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 30(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-1704.

CHAPTER 19A. LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

Sec.
35-1945. Powers and duties of the Association.
35-1950. Credits for assessments paid.

§ 35-1945. Powers and duties of the Association.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 31(a), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (d)(2).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 35-1946. Assessments.

Section references. — This section is referred to in §§ 35-105, 35-1945, 35-1947, and 35-1950.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 35-1950. Credits for assessments paid.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 31(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-1945.

§ 35-1951. Miscellaneous.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

CHAPTER 21. COMPULSORY/NO-FAULT MOTOR VEHICLE INSURANCE.

§ 35-2102. Definitions.

As used in this chapter:

* * * * *

(17) The term "motor vehicle" means any device propelled by an internal-combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired. The term "motor vehicle" does not include traction engines used exclusively for drawing vehicles in fields, road rollers, vehicles propelled only upon rails and tracks, and battery-operated wheelchairs when operated by a handicapped person at speeds not exceeding 10 miles per hour.

* * * * *

(Mar. 26, 1999, D.C. Law 12-184, § 2, 45 DCR 7796.)

Effect of amendments.
D.C. Law 12-184 inserted "including any non-operational vehicle that is being restored or repaired" in (17).

Legislative history of Law 12-184. — Law 12-184, the "Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998," was introduced in Council and assigned Bill No. 12-8, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998 and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-455, and transmitted to both Houses of Congress for review. D.C. Law 12-184 became effective on March 26, 1999.

Construction of policies. — This section and § 40-408, although different sections of the Code, are subject to similar legal analysis; just as insurance policies in the District are construed in favor of coverage, the statutory law on agency creates a presumption of consent. Martinage v. Shapiro, et al., 125 WLR 2001 (Super. Ct. 1997).

§ 35-2104. Personal injury protection.

Additional injury coverage. — Plaintiff's uninsured motorist policy covered injuries incurred when a dog jumped from a parked truck and attacked the plaintiff. Martinage v. Shapiro, et al., 125 WLR 2001 (Super. Ct. 1997).

§ 35-2109. Consumer protection.

* * * * *

(o) *Insurer to provide settlement.* — Each insurer shall, at the time of renewal or denial of a motor vehicle insurance policy, provide to an applicant a statement which provides the following information:

(1) If requested by the policyholder, the cost of the minimum package of insurance required by this chapter; and

* * * * *

(Apr. 13, 1998, D.C. Law 12-209, § 401, 45 DCR 8433.)

Effect of amendments.

D.C. Law 11-268 substituted "Commissioner" for "Superintendent" throughout (b) and (i).

D.C. Law 12-209 added "If requested by the policyholder" at the beginning of (o)(1).

Temporary amendment of section. — Section 501 of D.C. Law 12-154 added "If requested by the policyholder" at the beginning of (o)(1).

Section 601(b) of D.C. Law 12-154 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 13 of the Reciprocal Insurance Company Conversion Emergency Amendment Act of 1998 (D.C. Act 12-298, March 4, 1998, 45 DCR 1775).

For temporary amendment of section, see § 501 of the Health Insurance Portability and Accountability Federal Law Conformity Emergency Amendment Act of 1998 (D.C. Act 12-339, May 4, 1998, 45 DCR 2947), and § 501 of the Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-429, August 6, 1998, 45 DCR 5890).

Legislative history of Law 11-268. — See note to § 35-2102.

Legislative history of Law 12-154. — Law 12-154, the "Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-611. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-373 and transmitted to both Houses of Congress for its review. D.C. Law 12-154 became effective on September 18, 1998.

Legislative history of Law 12-209. — Law 12-209, the "Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998," was introduced in Council and assigned Bill No. 12-419, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 16, 1998, it was assigned Act No. 12-496, and transmitted to both Houses of Congress for review. D.C. Law 12-209 became effective on April 13, 1999.

§ 35-2110. Special provisions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 32(a), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 37, 46 DCR 2118.)

Effect of amendments.

D.C. Law 12-81 validated a previously made technical correction in (b)(2).

D.C. Law 12-264, validated a previously made technical correction in (b)(2).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-264. — Law 12-264, the "Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626, and transmitted to both Houses of Congress for review. D.C. Law 12-264 became effective on April 20, 1999.

Cited in Vaughan v. Nationwide Mut. Ins. Co., App. D.C., 702 A.2d 198 (1997).

§ 35-2111. Miscellaneous provisions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 32(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (d)(3).

Legislative history of Law 12-81. — See note to § 35-2110.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 35-2114. Uninsured Motorist Fund.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

Chapter 23. Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage.

Sec.
35-2301. Definitions.
35-2306. Certification of nonhospital residential facilities and outpatient treatment facilities.

§ 35-2301. Definitions.

For the purposes of this chapter, the term:

* * * * *

(2A) "Commissioner" means the Commissioner of Insurance and Securities.

* * * * *

(21) Repealed.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 33, 45 DCR 745.)

Section references. — This section is referred to in § 32-571.1.

Effect of amendments.

D.C. Law 12-81 inserted (2A) and repealed (21).

Temporary amendment of section. — Section 2(a) of D.C. Law 12-108, as amended by D.C. Law 12-181, § 6(a), amended this section by adding (8A), (10A), (10B), (11A), (12A), and (19A) to read as follows:

"For the purposes of this chapter, the term:

*****

"(8A) 'Individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

*****

"(10A) 'Large employer' means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding year and who employs at least 2 employees on the first day of the plan year.

"(10B) 'Large group market' means the health insurance market under which individuals obtain health insurance (directly or through any arrangement) on behalf of them-

selves (and their dependents) through a group health plan maintained by a large employer.

*****

"(11A) 'Medical or surgical benefits' means benefits with respect to medical or surgical services as defined under the terms of the plan or coverage, but does not include mental health benefits.

*****

"(12A) 'Mental health benefits' means benefits with respect to mental health services, as defined under the terms of the plan or coverage, but does not include benefits with respect to treatment of substance abuse or chemical dependency.

*****

"(19A) 'Small group market' means the health insurance market under which individuals obtain health insurance coverage (directly or through any arrangement) on behalf of themselves (and their dependents) through a group health plan maintained by a small employer."

Section 4(b) of D.C. Law 12-108 provides that the act shall expire after 225 days of its having taken effect.

Section 7(b) of D.C. Law 12-181 provides that this act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Emergency Amendment Act of 1998 (D.C. Act 12-274, February 19, 1998, 45 DCR 1526), and § 2(a) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Second Emergency Amendment Act of 1998 (D.C. Act 12-546, December 18, 1998, 46 DCR 497).

Section 4 of D.C. Act 12-546 provided for the application of the act.

For temporary amendment of section see § 6(a) of the Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Emergency Amendment Act of 1998 (D.C. Act 12-396, Sept. 16, 1998, 45 DCR 6952).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-108. — Law 12-108, the "Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Temporay Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-512. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respectively. Signed by the Mayor on February 19, 1998, it was assigned Act No. 12-286 and transmitted to both Houses of Congress for its review. D.C. Law 12-108 became effective on May 8, 1998.

Legislative history of Law 12-181. — Law 12-181, the "Vendor Payment and Drug Abuse, Alcohol Abuse, and Mental Illness Coverage Temporary Act of 1998," was introduced in Council and assigned Bill No. 12-627. The Bill was adopted on first and second readings on June 2, 1998, and July 7, 1998, respectively. Signed by the Mayor on July 27, 1998, it was assigned Act. No. 12-434 and transmitted to both Houses of Congress for its review. D.C. Law 12-181 became effective on March 26, 1999.

§ 35-2302. Coverage.

Temporary amendment of section. — Section 2(b) of D.C. Law 12-108 amended this section by adding a new (i) to read as follows:

"(i) When a large group health plan offers a participant or beneficiary 2 or more benefit package options under the plan, the requirements of this act must be applied separately to each option."

Section 4(b) of D.C. Law 12-108 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Emergency Amendment Act of 1998 (D.C. Act 12-274, February 19, 1998, 45 DCR 1526), and § 2(b) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Second Emergency Amendment Act of 1998 (D.C. Act 12-546, December 18, 1998, 46 DCR 497).

Section 4 of D.C. Act 12-546 provided for the application of the.

Legislative history of Law 12-108. — See note to § 35-2301.

§ 35-2305. Nondiscrimination.

Temporary repeal of section. — Section 2(c) of D.C. Law 12-108 repealed this section.

Section 4(b) of D.C. Law 12-108 provides that the act shall expire after 225 days of its having taken effect.

Temporary addition of section. — Section 2(d) of D.C. Law 12-108, as amended by D.C. Law 12-264, § 38, added a new § 6a to D.C. Law 6-195 to read as follows:

"§ 35-2305.1. Exemptions.

"(a) Methods of determining levels of payment or reimbursement for services, or for the type of facility charge eligible for payment or reimbursement pursuant to this chapter, shall be consistent with those for physical illnesses in general and shall take into consideration usual, customary, and reasonable charges for those services. Except as otherwise provided in § 35-2304(b), deductible or copayment plans, and limits on total amounts payable to an individual in a calendar year or lifetime payment limits may be applied; provided, however, that the inpatient and outpatient benefits set forth in § 35-2304 shall be provided for health plans issued in the individual market and small group market with a lifetime payment limit of not less than $80,000 or ⅓ of the lifetime maximum for physical illness, whichever is greater; and for health plans issued in the large group market, the inpatient and outpatient benefits set forth in section 5 shall be applied with the same lifetime and annual limits for medical, surgical, and mental benefits.

"(b) If the cost of complying with the mental health provisions of subsection (a) of this section for large group markets results in at least a 1% increase in the cost of the plan, then the group health plan (or health insurance offered in connection with a group health plan) is exempt from meeting those mental health benefits parity provisions.

"(c) When a group health plan is exempt from complying with the mental health benefits parity provisions in subsection (b) of this section, it shall comply with the individual and small group market requirements in subsection (a) of this section.

"(d) Nothing in this section shall be construed as requiring health maintenance organizations to provide any greater level of covered benefits than the level required of insurers."

Section 4(b) of D.C. Law 12-108 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see §§ 2(c) and (d) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Emergency Amendment Act of 1998 (D.C. Act 12-274, February 19, 1998, 45 DCR 1526).

For temporary repeal of section, see § 2(c) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Second Emergency Amendment Act of 1998 (D.C. Act 12-546, December 24, 1998, 45 DCR 497).

For temporary addition of § 35-2305.1, see § 2(d) of the Drug Abuse, Alcohol Abuse, and Mental Illness Insurance Coverage Second Emergency Amendment Act of 1998 (D.C. Act 12-546, December 18, 1998, 46 DCR 497).

Section 4 of D.C. Act 12-546 provided for the application of the act.

Legislative history of Law 12-103. — See note to § 35-2301.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 35-2306. Certification of nonhospital residential facilities and outpatient treatment facilities.

* * * * *

(e) Any certification issued pursuant to this section shall be issued as a Class A Public Health: Human Services Facility endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Feb. 28, 1987, D.C. Law 6-195, § 7, 34 DCR 491; Apr. 20, 1999, D.C. Law 12-261, § 2003(kk), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (e).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on

December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 25. LIABILITY COVERAGE FOR CHILD DEVELOPMENT HOMES INSURANCE.

Sec.
35-2503. Commissioner to establish liability coverage levels.

§ 35-2503. Commissioner to establish liability coverage levels.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 34, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CHAPTER 26. MEDICARE SUPPLEMENT INSURANCE.

Sec.
35-2611. Definitions.
35-2615. Disclosure standards.

§ 35-2611. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 35(a), 45 DCR 745.)

Effect of amendments.

D.C. Law 12-81 validated a previously made technical correction in (6).

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(a) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(a) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(a) of the Medicare Supplement Insurance Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(a) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 4 of D.C. Act 12-49 provides for the application of the act.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-2612. Applicability and scope.

Emergency act amendments. — For temporary amendment of section, see § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(b) and (c) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 4 of D.C. Act 12-49 provides for the application of the act.

§ 35-2615. Disclosure standards.

* * * * *

(d) The Mayor may issue regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare, other than:

* * * * *

(2) Disability income policies.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 35(b), 45 DCR 745.)

Effect of amendments.

D.C. Law 12-81, in (d)(1), validated a previously made technical correction; and in (d)(2), made a punctuation change.

Emergency act amendments. — For temporary amendment of section, see § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Emergency Amendment Act of 1996 (D.C. Act 11-244, April 11, 1996, 43 DCR 2119), § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Legislative Review Emergency Amendment Act of 1996 (D.C. Act 11-396, October 9, 1996, 43 DCR 5684), § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-416, October 28, 1996, 43 DCR 6078), § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Second Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-474, December 30, 1996, 44 DCR 198), and see § 2(d) through (f) of the Medicare Supplement Insurance Minimum Standards Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-49, March 31, 1997, 44 DCR 2112).

Section 4 of D.C. Act 12-49 provides for the application of the act.

Legislative history of Law 12-81. — See note to § 35-2611.

Chapter 27. Insurance Regulatory Trust Fund.

§ 35-2701. Definitions.

For the purposes of this chapter, the term:

(1) "Assessable year" means the calendar year in which the direct gross receipts are received or derived from insurance business in the District of Columbia.

(1A) "Commissioner" means the Commissioner of Insurance and Securities.

(1B) "Department of Insurance and Securities Regulation" means the District of Columbia's regulatory body which is responsible for administering the insurance laws and health maintenance organization laws of the District of Columbia.

(2) "Direct gross receipts" means all policy and membership fees and net premium receipts or consideration received in a calendar year on all insurance risks and annuity contracts originating in or from the District of Columbia.

(3) Repealed.

(4) "Insurer" means any person, firm, association, or corporation duly licensed in the District of Columbia pursuant to the applicable provisions of District insurance law as an insurer. In addition, Group Hospitalization and Medical Service Incorporated, shall be defined as an insurer.

(5) "Net premium receipts or consideration received" means gross premiums or consideration received less the sum of premiums received for reinsurance assumed and premiums or consideration returned on policies or contracts canceled or not taken.

(6) Repealed. (Oct. 21, 1993, D.C. Law 10-40, § 2, 40 DCR 6009; Apr. 9, 1997, D.C. Law 11-235, § 24(a), 44 DCR 818; May 21, 1997, D.C. Law 11-268, § 10(y), 44 DCR 1730; Mar. 24, 1998, D.C. Law 12-81, § 36(a), 45 DCR 745.)

Effect of amendments.

D.C. Law 12-81, in (1A), substituted "Commissioner of Insurance and Securities" for "Commissioner or Department of Insurance and Securities Regulation"; inserted "Regulation" in (1B); and in (4), substituted "Group Hospitalization and Medical Service Incorporated" for "Group Hospitalization and Medical Service, Incorporated."

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-2704. Failure to pay share of assessment.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 36(b), 45 DCR 745.)

Effect of amendments.

D.C. Law 12-81 validated a previously made technical correction in the introductory paragraph of (a).

Legislative history of Law 12-81. — See note to § 35-2701.

§ 35-2709. Annual audit of Insurance Regulatory Trust Fund.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 36(c), 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-2701.

CHAPTER 28. INSURERS REHABILITATION AND LIQUIDATION PROCEDURES.

Sec.
35-2801.Definitions.
35-2819. Powers of liquidator.

§ 35-2801. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 37(a), 45 DCR 745.)

Section references. — This section is referred to in § 35-3745.

Effect of amendments.
D.C. Law 12-81 validated previously made technical corrections in (12)(C), (12)(D), (13) and (17).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-2819. Powers of liquidator.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 37(b), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(e), 46 DCR 2118.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction in (a)(23).

D.C. Law 12-264 validated a previously made technical correction in (a)(23).

Legislative history of Law 12-81. — See note to § 35-2801.

Legislative history of Law 12-264. — Law 12-264, the "Health Insurance Portability and Accountability Federal Law Conformity and No-Fault Motor Vehicle Insurance Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626, and transmitted to both Houses of Congress for review. D.C. Law 12-264 became effective on April 20, 1999.

§ 35-2838. Claims of surety.

Legislative history of Law 10-35. — See note to § 35-2801.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

CHAPTER 29. RISK RETENTION.

§ 35-2901. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 38(a), 45 DCR 745.)

Section references. — This section is referred to in §§ 35-2903, 35-2907, 35-3741, and 35-4001.

Effect of amendments.

D.C. Law 12-81 validated a previously made technical correction to the paragraph designations of (1) and (1A).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-2902. Risk retention groups chartered in the District.

(a)

* * * * *

(3) Any license issued pursuant to this section shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47.

* * * * *

(Apr. 20, 1999, D.C. Law 12-261, § 2003(ll), 46 DCR 3142.)

Effect of amendments. — D.C. Law 11-268 substituted "Commissioner" for "Superintendent" in the last sentence in (b) and in the introductory language of (c)(1).

D.C. Law 12-261 added (a)(3).

Legislative history of Law 11-268. — See note to § 35-2901.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

§ 35-2903. Risk retention groups not chartered in the District.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 38(b), 45 DCR 745.)

Effect of amendments.

D.C. Law 12-81 validated a previously made technical correction in (6).

Legislative history of Law 12-81. — See note to § 35-2901.

CHAPTER 31. REINSURANCE IN TERMINARY.

Sec.
35-3102. Licensure.

§ 35-3102. Licensure.

* * * * *

(g) Any license issued pursuant to this section for a reinsurance intermediary shall be issued as a Class A Financial Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Oct. 21, 1993, D.C. Law 10-47, § 3, 40 DCR 6093; March 17, 1994, D.C. Law 10-76, § 6(a), 40 DCR 8456; Apr. 26, 1994, D.C. Law 10-103, § 6(a), 41 DCR 1005; Mar. 21, 1995, D.C. Law 10-233, § 10, 42 DCR 24; Apr. 20, 1999, D.C. Law 12-261, § 2003(mm), 46 DCR 3142.)

Effect of amendments.
D.C. Law 12-261 added (g).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 36. LAW ON EXAMINATIONS.

Sec.
35-3601. Definitions.

§ 35-3601. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 39, 45 DCR 745.)

Effect of amendments.
D.C. Law 12-81 validated a previously made technical correction to the designation of paragraph (2A).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CHAPTER 37. HOLDING COMPANIES.

Subchapter I. Holding Company System.

Subchapter II. Mutual Holding Companies.

Subchapter III. Reciprocal Insurance Company Conversion.

Subchapter I. Holding Company System.

§ 35-3702. Subsidiaries of insurers.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 40(a), 45 DCR 745.)

Section references. — This section is referred to in § 35-3745.

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b)(2)(A).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-3703. Acquisition of control of or merger with domestic insurer.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 40(b), 45 DCR 745.)

Section references. — This section is referred to in §§ 35-3704, 35-3709, 35-3742, 35-3743, and 35-3746.

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (b)(1) and (g)(2).

Legislative history of Law 12-81. — See note to § 35-3702.

Integrity of controlling parties. — Commissioner properly considered the integrity of the controlling parties of a proposed business combination, as required by subsection (g)(1)(E) of this section, including the severance pay packages that would accrue, and reasonably concluded that the parties' integrity would remain intact. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

Abandonment of procedural claim. — Although petitioners initially asserted a right to cross-examine witnesses under subsection (g)(2) of this section, they abandoned their claim by failing to object when a contrary procedure was announced. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

§ 35-3714. Judicial review; mandamus.

Construction of "person aggrieved." — "Person aggrieved," as used in this section, should be interpreted broadly to include the class of persons allowed to participate in hearings pursuant to § 35-3703. Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

Subchapter II. Mutual Holding Companies.

§ 35-3721. Formation of a mutual holding company.

* * * * *

(b) The Commissioner, after a public hearing as provided in § 35-3703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, shall approve the proposed plan of reorganization and may require as a condition of approval such modifications of the proposed plan of reorganization as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 35-3703(g)(3). A reorganization pursuant to this section is subject to § 35-3703(a), (b), and (c). The Commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 41(a), 45 DCR 745; Mar. 26, 1999, D.C. Law 12-188, § 2(a), 45 DCR 7807.)

Section references. — This section is referred to in § 35-3724.

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (a) and (b).

D.C. Law 12-188 substituted "§ 35-3703(g)(3)"for "§ 35-3703(g)(13)" in (b).

Temporary amendment of section. — Section 2(a) of D.C. Law 12-119 substituted "§ 35-3703(g)(3)" for "§ 35-3703(g)(13)" in (b).

Section 4(b) of D.C. Law 12-119 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(a) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(a) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-364, June 5, 1998, 45 DCR 3875), and § 2(a) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Section 4 of D.C. Act 12-550 provides for the application of the act.

Legislative history of Law 12-81. — See note to § 35-3702.

Legislative history of Law 12-119. — Law 12-119, the "Mutual Holding Company Mergers and Acquisition Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-544. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 18, 1998, it was assigned Act No. 12-318 and transmitted to both Houses of Congress for its review. D.C. Law 12-119 became effective on June 11, 1998.

Legislative history of Law 12-188. — Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

§ 35-3722. Merger of policyholder membership interests.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 41(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (a) and (b).

Legislative history of Law 12-81. — See note to § 35-3702.

§ 35-3723. Incorporation of holding company; amendment of articles of incorporation.

(a) A mutual insurance holding company resulting from a reorganization of a domestic mutual insurance company organized under Chapter 6 of this title shall be incorporated pursuant to Chapter 6 of this title. The articles of incorporation and any amendments to such articles of the mutual insurance holding company shall be subject to approval of the Commissioner and Corporation Counsel of the District in the same manner as those of an insurance company. The Commissioner and Corporation Counsel shall promptly examine the articles of incorporation, and if they find that the articles of incorporation comply with the law, the Commissioner and Corporation Counsel shall endorse their approval upon each of the originals, place one on file in the Commissioner's office, and return the remaining sets to the incorporators. The incorporators shall promptly file such endorsed articles of incorporation with the D.C. Office of Corporations. The endorsed articles of incorporation shall be deemed effective as of the effective date of a reorganization accomplished pursuant to this act, upon the filing of the articles with the D.C. Office of Corporations.

(b) A domestic mutual insurance holding company may amend its articles of incorporation by vote of 2/3rds of those members who vote either in person or by proxy at a lawful meeting of its members, if the notice given members included due notice of the proposal to amend. Upon adoption of an amendment, the mutual holding company shall make under its corporate seal a certificate thereof, setting forth the amendment and the date and manner of the adoption thereof, which certificate shall be executed by the mutual insurance holding company's president or vice president and secretary or assistant secretary, and acknowledged before an officer authorized to take acknowledgments. The mutual insurance holding company shall deliver the originals of the certificate to the Commissioner and Corporation Counsel. The Commissioner and Corporation Counsel shall promptly examine the certificate of amendment, and, if the Commissioner and Corporation Counsel find that the certificate and the amendment comply with law, the Commissioner and Corporation Counsel shall endorse their approvals upon each of the originals, place one on file in the Commissioner's office, and return the remaining sets to the mutual insurance holding company. The mutual insurance holding company shall promptly file such endorsed certificates of amendment with the D.C. Office of Corporations. The D.C. Office of Corporations shall accept the endorsed certificates of amendment without further review or approval. The amendment shall be effective when filed with the D.C. Office of Corporations. (Sept. 20, 1996, D.C. Law 11-159, § 4, 43 DCR 3714; Mar. 24, 1998, D.C. Law 12-81, § 41(c), 45 DCR 745; Mar. 26, 1999, D.C. Law 12-188, § 2(b), 45 DCR 7807.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

D.C. Law 12-188 rewrote the section.

Temporary amendment of section. — Section 2(b) of D.C. Law 12-119 rewrote the section.

Section 4(b) of D.C. Law 12-119 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(b) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(b) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-364, June 5, 1998, 45 DCR 3875), and § 2(b) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Section 4 of D.C. Act 12-550 provides for the application of the act.

Legislative history of Law 12-81. — See note to § 35-3702.

Legislative history of Law 12-119. — See note to § 35-3721.

Legislative history of Law 12-188. — Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in text. — "This act," referred to in (a), is D.C. Law 12-188.

§ 35-3724. Insurers rehabilitation and liquidation.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 41(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-3702.

§ 35-3725. Applicability; membership interest; powers.

* * * * *

(d) The requirement of § 35-621 that every director of a stock company organized under the Chapter 6 of this title shall be a stockholder thereof is not applicable to a mutual insurance holding company, any intermediate insurance holding company, or any reorganized insurance company established pursuant to this subchapter. Every director of a mutual insurance holding company, any intermediate holding company, and any reorganized insurance company shall be a policyholder of the reorganized insurance company, having purchased a policy in a manner that shall not unfairly discriminate in favor of such director, either before or after the reorganization pursuant to § 35-3721 or § 35-3722.

(e)(1) A mutual insurance holding company shall not be authorized to pay dividends or make distributions to any mutual insurance holding company member except as may be expressly provided by the Commissioner.

(2) Neither the adoption nor the implementation of a plan of reorganization, or a plan of merger or other affiliation, involving a mutual insurance holding company, shall be deemed to give rise to any obligation by or on behalf of a mutual insurance company or a mutual insurance holding company to make any distribution or payment to any member or policyholder, or to any other person, fund, or entity of any nature whatsoever, in connection with the ownership, control, benefits, policies, purpose, or nature of a mutual insurance

company or a mutual insurance holding company, or otherwise, except as expressly provided in a plan of reorganization, a plan of merger or other affiliation involving a mutual insurance holding company, or as expressly approved by the Commissioner.

(f) A mutual insurance holding company created under this subchapter shall exercise any other power or engage in any activity permitted to a mutual insurance company organized under District laws. (Sept. 20, 1996, D.C. Law 11-159, § 6, 43 DCR 3714; Mar. 26, 1999, D.C. Law 12-188, § 2(c), 45 DCR 7807.)

Cross references. — As to the Life Insurance Act, see § 3-301.

Effect of amendments. — D.C. Law 12-188 added (d), (e), and (f).

Temporary amendment of section. — Section 2(c) of D.C. Law 12-119 added (d), (e), and (f).

Section 4(b) of D.C. Law 12-119 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2(c) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(c) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-364, June 5, 1998, 45 DCR 3876), and § 2(c) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Section 4 of D.C. Act 12-550 provides for the application of the act.

Legislative history of Law 12-119. — See note to § 35-3721.

Legislative history of Law 12-188. — Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in text. — "Section 19 of the Life Insurance Act," which is referred to in (a), is probably a reference to former § 35-418; it may also be a reference to § 35-619.

"This act," referred to in (d), is D.C. Law 12-188.

§ 35-3727. Limitations of actions.

Any action challenging the validity of or arising out of acts taken or proposed to be taken under this subchapter shall be commenced within 30 days after the the date of the issuance of any order by the Commissioner pursuant to this subchapter. In any action challenging the validity of or arising out of acts taken or proposed to be taken under this subchapter, or charging that the directors of the mutual insurance holding company or any of its subsidiaries have acted improperly in connection with any aspect of the acts taken or proposed to be taken under this subchapter, the mutual insurance holding company or any of its subsidiaries in whose right such action is brought, or the defendant(s) shall be entitled at any state of the proceedings before final judgment to require the plaintiff(s) to give security for the reasonable expenses, including attorney fees, which may be incurred by the mutual insurance holding company or any of its subsidiaries or any other defendant(s) in connection with such action. Thereafter, the amount of such security, from time to time, may be increased or decreased in the discretion of the court having jurisdiction of such action upon a showing that the security provided has or may become inadequate or excessive. (Sept. 20, 1996, D.C. Law 11-159, § 8, 43 DCR 3714; Apr. 9, 1997, D.C. Law 11-202, § 4, 43 DCR 6054; Mar. 26, 1999, D.C. Law 12-188, § 2(d), 45 DCR 7807.)

Effect of amendments.

D.C. Law 12-188 substituted "the date . . . this act" for "the effective date of any plan submitted for approval pursuant to this subchapter" in the first sentence; and added the second and third sentences.

Temporary amendment of section. — Section 2(d) of D.C. Law 12-119 rewrote the section.

Section 4(b) of D.C. Law 12-119 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see § 2 of the Mutual Holding Company Congressional Adjournment Emergency Amendment Act of 1996 (D.C. Act 11-449, December 10, 1996, 43 DCR 6866), and § 2 of the Mutual Holding Company Congressional Review Emergency Amendment Act of 1997 (D.C. Act 12-6, March 3, 1997, 44 DCR 1619).

Section 4 of D.C. Act 12-6 provides for the application of the act.

For temporary amendment of section, see § 2(d) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(d) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-364, June 5, 1998, 45 DCR 3877), and § 2(d) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Section 4 of D.C. Act 12-550 provides for the application of the act.

Legislative history of Law 12-119. — See note to § 35-3721.

Legislative history of Law 12-188. — Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in text. — "This act," referred to in the first and second sentences, is D.C. Law 12-188.

§ 35-3727.1. Mergers and acquisitions.

(a) Subject to applicable requirements of this subchapter and subchapter I of this chapter, a mutual insurance holding company may:

(1) Merge or consolidate with, or acquire the assets of, a mutual insurance holding company licensed pursuant to this subchapter or any similar entity organized pursuant to laws of any other state;

(2) Either alone or together with one or more intermediate stock holding companies, or other subsidiaries, directly or indirectly acquire the stock of a stock insurance company or a mutual insurance company that reorganizes under this subchapter or the law of its state of organization;

(3) Together with one or more of its stock insurance company subsidiaries, acquire the assets of a stock insurance company or a mutual insurance company;

(4) Acquire a stock insurance company through the merger of such stock insurance company with a stock insurance company or interim stock insurance company subsidiary of the mutual insurance holding company; or

(5) Acquire the stock or assets of any other person to the same extent as would be permitted for any District stock corporation or, if the mutual insurance holding company writes insurance, a mutual insurance company.

(b) A merger or acquisition pursuant to this section is subject to the applicable procedures prescribed by the District laws applying to mutual insurance companies, except as otherwise provided in this subsection. The Commissioner may retain, at the expense of the mutual insurance company, any attorneys, actuaries, accountants, and other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed merger or acquisition.

(1) The plan and agreement for merger shall be submitted to and approved by vote of 2/3rds of those members of any domestic mutual insurance holding company involved in the merger who vote either in person or by proxy thereon at a lawful meeting called for the purpose pursuant to such reasonable notice and procedure as has been approved by the Commissioner.

(2) No such merger shall be effectuated unless in advance thereof, the plan and agreement therefor have been filed with the Commissioner and approved by him. The Commissioner shall give such approval unless he finds such plan or agreement:

(A) Is inequitable to the policyholders of any domestic insurer involved in the merger or the members of any domestic mutual insurance holding company involved in the merger; or

(B) Would substantially reduce the security of and service to be rendered to policyholders of a domestic insurer in the District. (September 20, 1996, D.C. Law 11-159, § 8a, as added Mar. 26, 1999, D.C. Law 12-188, § 2(e), 45 DCR 7807.)

Effect of amendments. — D.C. Law 12-188 added this section.

Temporary addition of section. — Section 2(e) of D.C. Law 12-119 added this section.

Section 4(b) of D.C. Law 12-119 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary addition of section, see § 2(e) of the Mutual Holding Company Mergers and Acquisition Emergency Amendment Act of 1998 (D.C. Act 12-295, March 4, 1998, 45 DCR 1764), § 2(e) of the Mutual Holding Company Mergers and Acquisition Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-364, June 5, 1998, 45 DCR 3877), and § 2(e) of the Mutual Holding Company Mergers and Acquisition Second Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-550, December 18, 1998, 46 DCR 512).

Section 4 of D.C. Act 12-550 provides for the application of the act.

Legislative history of Law 12-119. — See note to § 35-3721.

Legislative history of Law 12-188. — Law 12-188, the "Mutual Holding Company Mergers and Acquisitions Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-541, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-459, and transmitted to both Houses of Congress for review. D.C. Law 12-188 became effective on March 26, 1999.

References in text. — "This act," referred to in (a), is D.C. Law 12-188.

Subchapter III. Reciprocal Insurance Company Conversion.

§ 35-3741. Definitions.

For the purposes of this subchapter, the term:

(1) "Reciprocal insurance company" includes an interinsurance exchange but shall not include a risk retention group as defined in § 35-2901(12).

(2) "Voting shares" means shares entitling the holder to vote for the election of directors of the issuer except that shares which can be voted only in the case of the occurrence of an event or an extraordinary action are not voting shares. (May 12, 1998, D.C. Law 12-112, § 2, 45 DCR 1792.)

Emergency act amendments. — For temporary addition of this subchapter, comprised of §§ 35-3741 through 35-3750 see §§ 2-11 of the Reciprocal Insurance Company Conversion Emergency Amendment Act of 1998 (D.C. Act 12-298, March 4, 1998, 45 DCR 1775).

Legislative history of Law 12-112. — Law 12-112, the "Reciprocal Insurance Company Conversion Act of 1998," was introduced in Council and assigned Bill No. 12-445. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respec-

tively. Signed by the Mayor on February 24, 1998, it was assigned Act No. 12-301 and transmitted to both Houses of Congress for its review. D.C. Law 12-112 became effective on May 12, 1998.

§ 35-3742. Formation of a mutual insurance holding company from a reciprocal insurance company.

(a) Upon approval of the Commissioner, a domestic reciprocal insurance company may form a mutual insurance holding company that directly or indirectly owns the insurance company, based upon a conversion plan. The reorganized insurance company shall continue, without interruption, its existence as a stock insurance company subsidiary of the mutual insurance holding company or as a stock insurance company subsidiary to an intermediate holding company which is a subsidiary of the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 35-3703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the conversion plan is fair and equitable to the policyholders, shall approve the proposed conversion plan and may require as a condition of approval such modifications of the proposed conversion plan as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 35-3703(g)(3). A conversion pursuant to this section shall be subject to § 35-3703(a), (b), and (c). The Commissioner shall retain jurisdiction over a mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company. (May 12, 1998, D.C. Law 12-112, § 3, 45 DCR 1792.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3743. Merger of policyholder membership interests.

(a) Upon approval of the Commissioner, a domestic or foreign reciprocal or mutual insurance company may merge its policyholders' membership interests into a mutual insurance holding company formed pursuant to this section and continue, without interruption, the existence of the insurance company as a stock insurance company subsidiary of the mutual insurance holding company or as a stock insurance company subsidiary of an intermediate holding company which is a subsidiary of the mutual insurance holding company.

(b) The Commissioner, after a public hearing as provided in § 35-3703(g)(1), if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, shall approve the proposed merger and may require as a condition of approval such modifications of the proposed merger as the Commissioner finds necessary for the protection of the policyholders' interests. The Commissioner may retain consultants as provided in § 35-3703(g)(3). A merger pursuant to this section shall be subject to § 35-3703(a), (b), and (c). The Commissioner shall retain jurisdiction over the mutual insurance holding company organized pursuant to this section to assure that policyholder interests are protected.

(c) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company.

(d) Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times directly or indirectly own a majority of the voting shares of the capital stock of the reorganized insurance company. A merger of policyholders' membership interests in a reciprocal or mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of insurance companies pursuant to § 35-3703 which shall be applicable. (May 12, 1998, D.C. Law 12-112, § 4, 45 DCR 1793.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3744. Incorporation of holding company.

A mutual insurance holding company resulting from a conversion of a domestic reciprocal insurance company shall be incorporated pursuant to Chapter 3 of Title 29 ("Business Corporation Act"), and shall be subject to the provisions of the Business Corporation Act to the extent that those provisions are not in conflict with this subchapter. The articles of incorporation and any amendments to such articles of incorporation of the mutual insurance holding company shall be subject to approval of the Commissioner and Corporation Counsel of the District in the same manner as those of an insurance company. (May 12, 1998, D.C. Law 12-112, § 5, 45 DCR 1794.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3745. Insurers rehabilitation and liquidation.

(a) A mutual insurance holding company shall be deemed to be an insurer subject to Chapter 28 of Title 35 ("Insurers Rehabilitation and Liquidation Act"), and shall automatically be a party to any proceeding under the Insurers Rehabilitation and Liquidation Act involving an insurance company, which as a result of a conversion or merger pursuant to § 35-3702 or § 35-3703 is directly or indirectly a subsidiary of the mutual insurance holding company. In

any proceeding under the Insurers Rehabilitation and Liquidation Act involving the converted or merged insurance company, the assets of the mutual insurance holding company shall be deemed to be assets of the estate of the converted or merged insurance company for purposes of satisfying the claims of the converted or merged insurance company's policyholders.

(b) A mutual insurance holding company shall not dissolve or liquidate without the approval of the Commissioner or as ordered by a District of Columbia court pursuant to the Insurers Rehabilitation and Liquidation Act. (May 12, 1998, D.C. Law 12-112, § 6, 45 DCR 1794.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3746. Applicability; membership interest; powers.

(a) A membership interest in a mutual insurance holding company shall not constitute an equity security as defined in § 35-213.

(b) A mutual insurance holding company created under this subchapter shall have the same powers to borrow or assume liability as a reciprocal insurance company organized under District law. (May 12, 1998, D.C. Law 12-112, § 7, 45 DCR 1794.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3747. Failure to give notice.

If the reciprocal insurance company complies substantially and in good faith with the notice requirements of this subchapter, the reciprocal insurance company's failure to give any member or members any required notice shall not impair the validity of any action taken under this subchapter. (May 12, 1998, D.C. Law 12-112, § 8, 45 DCR 1795.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3748. Limitations of actions.

Any action challenging the validity of, or arising out of acts taken or proposed to be taken under, this subchapter shall be commenced within 30 days after the effective date of any plan submitted for approval pursuant to this subchapter. (May 12, 1998, D.C. Law 12-112, § 9, 45 DCR 1795.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3749. Conversion of mutual insurance holding company.

Chapter 42 of Title 35 shall be applicable to the conversion of a mutual insurance holding company formed under this subchapter to a stock company as if the mutual insurance holding company were a mutual insurance company. (May 12, 1998, D.C. Law 12-112, § 10, 45 DCR 1795.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

§ 35-3750. Rulemaking.

The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue rules and regulations to implement the provisions of this subchapter. (May 12, 1998, D.C. Law 12-112, § 11, 45 DCR 1795.)

Emergency act amendments. — See note to § 35-3741.

Legislative history of Law 12-112. — See note to § 35-3741.

CHAPTER 39. PROPERTY AND LIABILITY INSURANCE GUARANTY ASSOCIATION.

§ 35-3901. Definitions.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

CHAPTER 41. INSURANCE INDUSTRY MATERIAL TRANSACTIONS DISCLOSURES.

Sec.
35-4101. Report requirement.
35-4103. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

§ 35-4101. Report requirement.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 42(a), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (a) and (d).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-4103. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 42(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (d)(1).

Legislative history of Law 12-81. — See note to § 35-4101.

CHAPTER 42. INSURANCE DEMUTUALIZATION.

§ 35-4201. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(a), 45 DCR 745.)

Section references. — This section is referred to in § 35-3749.

Effect of amendments. — D.C. Law 12-81 inserted (1A) and repealed (6).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-4202. Adoption of the plan of conversion by the board of directors.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4203. Approval of the plan of conversion by the Commissioner of Insurance and Securities.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in the introductory paragraphs of (a), (b), and (c), and in (b)(5) and (d).

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4204. Approval of the plan by the members.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical corrections in (b) and (c).

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4205. Adoption of revised articles of incorporation.

Section references. — This section is referred to in § 35-4207.

Temporary amendment of section. — Section 2(a) of D.C. Law 12-221 added (d) to read as follows:

****

"(d) Prior to implementation of a plan of conversion adopted by a mutual company, no person shall knowingly acquire, or make any offer, or make any announcement of an offer, for any security issued or to be issued by the mutual company in connection with its plan of conversion, or for any security issued by any other company authorized as an alternative for purposes of effecting the conversion pursuant to section § 35-4206(e), except in compliance with the maximum purchase limitations imposed by 35-4206(l) or the terms of the plan of conversion as approved by the Commissioner."

Section 4(b) of D.C. Law 12-221 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Insurance Demutualization Emergency Amendment Act of 1998 (D.C. Act 12-528, December 16, 1998, 45 DCR 476), and § 2(a) of the Insurance Demutualization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-35, March 18, 1999, 46 DCR 3004).

Legislative history of Law 11-126. — See note to § 35-4201.

Legislative history of Law 12-221. — Law 12-221, the "Insurance Demutualization Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-839. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-536 and transmitted to both Houses of Congress for its review. D.C. Law 12-221 became effective on April 13, 1999.

§ 35-4206. Required provisions in a plan of conversion.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(e), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (h), (j), (k)(4)-(6), and (l).

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4207. Optional provisions in a plan of conversion.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(f), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (a)(4).

Temporary amendment of section. — Section 2(b) of D.C. Law 12-221 amended (a) and (b) to read as follows:

"(a) The following provisions may be included in the plan:

"(1) The plan may provide that the directors and officers of the mutual company shall receive, without payment, nontransferable subscription rights to purchase capital stock of the converted stock company or the stock of another corporation that is participating in the conversion plan as provided in § 35-4206(e). Those subscription rights shall be allocated among the directors and officers by a fair and equitable formula.

*****

"(b) The plan may allocate to a tax-qualified employee benefit plan nontransferable subscription rights to purchase up to 10% of the capital stock of the converted stock company, or the stock of another corporation that is participating in the conversion plan as provided in § 35-4206(e) and (l). The employee benefit plan shall be entitled to exercise its subscription rights regardless of the amount of shares purchased by other persons."

Section 4(b) of D.C. Law 12-221 provided that this act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Insurance Demutualization Emergency Amendment Act of 1998 (D.C. Act 12-528, De-

cember 16, 1998, 45 DCR 476), and § 2(b) of the Insurance Demutualization Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-35, March 18, 1999, 46 DCR 3004).

Legislative history of Law 12-81. — See note to § 35-4201.

Legislative history of Law 12-221. — See note to § 35-4205.

§ 35-4208. Alternative plan of conversion.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(g), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4209. Effective date of the plan.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(h), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4210. Rights of members whose policies are issued after adoption of the plan and before its effective date.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(i), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (a).

Legislative history of Law 12-81. — See note to § 35-4201.

§ 35-4212. Conflict of interest.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 43(j), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-4201.

CHAPTER 43. REDOMESTICATION.

§ 35-4301. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 44(a), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-4303. Conversion to foreign insurer.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 44(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections.

Legislative history of Law 12-81. — See note to § 35-4301.

§ 35-4304. Effects of redomestication.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 44(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections throughout the section.

Legislative history of Law 12-81. — See note to § 35-4301.

CHAPTER 44. STATE OF ENTRY FOR NON-U.S. INSURERS.

Sec.
35-4401. Definitions.
35-4402. Authorization of entry.
35-4404. Requirements for trust agreement.
35-4405. Reporting requirements for U.S. Branches of non-U.S. insurers.
35-4406. Additional requirements for U.S. Branch license.
35-4407. Authority of the Commissioner.

§ 35-4401. Definitions.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(a), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 35-4402. Authorization of entry.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections throughout the section.

Legislative history of Law 12-81. — See note to § 35-4401.

§ 35-4404. Requirements for trust agreement.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in the introductory paragraph of (a), (b), (c), (d)(3), the introductory paragraph of (d)(7), (f), (g), and (h).

Legislative history of Law 12-81. — See note to § 35-4401.

§ 35-4405. Reporting requirements for U.S. Branches of non-U.S. insurers.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in the introductory paragraph of (a), (a)(2)(B)(vii), and (a)(3).

Legislative history of Law 12-81. — See note to § 35-4401.

§ 35-4406. Additional requirements for U.S. Branch license.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(e), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated previously made technical corrections in (a), (b), (d) and (e).

Legislative history of Law 12-81. — See note to § 35-4401.

§ 35-4407. Authority of the Commissioner.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 45(f), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — See note to § 35-4401.

CHAPTER 45. HEALTH MAINTENANCE ORGANIZATIONS.

§ 35-4501. Definitions.

For the purposes of this chapter, the term:

* * * * *

(18) Repealed.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 46(a), 45 DCR 745; Apr. 27, 1999, D.C. Law 12-274, § 501(a)(1), 46 DCR 1294.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (3).

D.C. Law 12-274 repealed (18).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Legislative history of Law 12-274. — Law 12-274, the "Health Benefits Plan Members Bill of Rights Act of 1998," was introduced in Council and assigned Bill No. 12-501. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 29, 1998, it was assigned Act No. 12-607, and transmitted to both Houses of Congress for review. D.C. Law 12-274 became effective on April 27, 1999.

Application of D.C. Law 12-274. — Section 501(b) of D.C. Law 12-274 provided that this section shall apply upon the promulgation of regulations pursuant to § 32-574.1

§ 35-4503. Issuance of certificate of authority.

Temporary amendment of section — Section 2 of D.C. Law 12-141, amended (c)(3) and added (c)(3A) to read as follows:

"(c) The Commissioner shall issue a certificate of authority to any person filing a completed application upon receiving the prescribed fees and upon the Commissioner being satisfied that:

***

"(3) Except as provided in paragraph (3A) of this subsection, the health maintenance organization shall effectively provide or arrange for basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles, or both;

"(3A)(A) Unless the District government makes arrangements to provide for mental health and substance abuse services for TANF and TANF-related Medicaid recipients on a fee-for-service basis, any health maintenance organization that has a current contract with the District government to provide managed care services pursuant to § 1-359(d)(2), shall effectively provide or arrange for services mandated under § 35-2301 et seq., on a prepaid or fee-for-service basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments or deductibles, or both.

"(B) This paragraph shall expire on April 3, 1999."

Section 4(b) of D.C. Law 12-141 provided that this act shall expire after the 225th day of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the TANF and TANF-Related Medicaid Managed

Care Program Emergency Amendment Act of 1998 (D.C. Act 12-311, March 26, 1998, 45 DCR 2124), and § 2 of the TANF and TANF-Related Medicaid Managed Care Program Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-366, June 5, 1998, 45 DCR 4039).

Legislative history of Law 12-141. — Law 12-141, the "TANF-Related Medicaid Managed Care Program Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-579. The Bill was adopted on first and second readings on March 17, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 22, 1999, it was assigned Act No. 12-344 and transmitted to both Houses of Congress for its review. D.C. Law 12-141 became effective on July 24, 1998.

§ 35-4504. Powers of health maintenance organizations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 46(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b).

Legislative history of Law 12-81. — See note to § 35-4501.

§ 35-4507. Requirements for group contract, individual contract, and evidence of coverage.

(a) Every group and individual contract holder is entitled to a group or individual contract.

* * * * *

(2) The contract shall contain a clear statement of the following:

* * * * *

(K) Repealed.

* * * * *

(Apr. 27, 1999, D.C. Law 12-274, § 501(a)(2), 46 DCR 1294.)

Section references. — This section is referred to in § 35-4519.

Effect of amendments. — D.C. Law 12-274 repealed (a)(2)(K).

Legislative history of Law 11-235. — See note to § 35-4501.

Legislative history of Law 12-274. — See note to § 35-4501.

Application of D.C. Law 12-274. — Section 501(b) of D.C. Law 12-274 provided that this section shall apply upon the promulgation of regulations pursuant to § 32-574.1

§ 35-4508. Annual report.

(a) Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least 2 principal officers with the Commissioner covering the preceding calendar year. The reports shall be on forms prescribed by the Commissioner. In addition, a health maintenance organization shall file with the Commissioner, unless otherwise stated:

* * * * *

(3) Repealed.

* * * * *

(Apr. 27, 1999, D.C. Law 12-274, § 501(a)(3), 46 DCR 1294.)

Section references. — This section is referred to in § 35-4525.

Effect of amendments. — D.C. Law 12-274 repealed (a)(3).

Legislative history of Law 11-235. — See note to § 35-4501.

Legislative history of Law 12-274. — See note to § 35-4501.

Application of D.C. Law 12-274. — Section 501(b) of D.C. Law 12-274 provided that this section shall apply upon the promulgation of regulations pursuant to § 32-574.1.

§ 35-4510. Grievance procedures.

Repealed.

(Apr. 9, 1997, D.C. Law 11-235, § 11, 44 DCR 818; Apr. 27, 1999, D.C. Law 12-274, § 501(a)(4), 46 DCR 1294.)

Legislative history of Law 12-274. — See note to § 35-4501.

Application of Law 12-274. — Section 501(b) of D.C. Law 12-274 provided that this section shall apply upon the promulgation of regulations pursuant to § 32-574.1.

§ 35-4512. Protection against insolvency.

* * * * *

(b) *Deposit requirements.* —

(5) The deposit shall be used to protect the interests of the health maintenance organization's enrollees and to assure continuation of covered services to enrollees of a health maintenance organization which is in rehabilitation or conservation. The Commissioner may use the deposit for administrative costs directly attributable to a receivership or liquidation. If a health maintenance organization is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of Chapter 28 of Title 35.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 46(c), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81, in (b)(5), substituted "Chapter 28 of Title 35" for "the liquidation act."

Legislative history of Law 12-81. — See note to § 35-4501.

§ 35-4517. Powers of insurance corporations.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 46(d), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (c).

Legislative history of Law 12-81. — See note to § 35-4501.

§ 35-4518. Examinations.

* * * * *

(g) A conversion of a nonprofit health maintenance organization to a for-profit corporation, or the acquisition of a nonprofit health maintenance organization or a management or service contract by a for-profit entity, shall not be approved by the Corporation Counsel unless charitable assets have been adequately protected pursuant to the provisions of the Healthcare Entity Conversion Act of 1997. (Apr. 9, 1997, D.C. Law 11-235, § 19, 44 DCR 818; Oct. 23, 1997, D.C. Law 12-32, § 12(c), 44 DCR 4819.)

Cross references. — As to healthcare entity conversion, see § 32-551 et seq.

Effect of amendments. — D.C. Law 12-32 added (g).

Legislative history of Law 12-32. — Law 12-32, the "Healthcare Entity Conversion Act of 1997," was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

References in text. — The "Healthcare Entity Conversion Act of 1997," referred to in (g), is D.C. Law 12-32.

§ 35-4527. Acquisition of control of or merger of a health maintenance organization.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 46(e), 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (a)(5).

Legislative history of Law 12-81. — See note to § 35-4501.

Chapter 47. Hospital and Medical Services Corporation Regulation.

Sec.
35-4702. Exclusivity of provisions.
35-4704. Application for certificate of authority.

§ 35-4702. Exclusivity of provisions.

(a) Except as provided in subsection (b) of this section, a corporation organized under the laws of the District of Columbia, or any state, or chartered by act of the Congress of the United States and issuing subscriber contracts in the District of Columbia shall be governed by this chapter and shall be exempt from all other provisions of District of Columbia law governing insurance, except as specifically referred to herein. No insurance law hereafter enacted by the District of Columbia shall be deemed to apply to such a corporation unless it is specifically referred to therein or unless such law represents an amendment or replacement of an insurance law made applicable to such corporations pursuant to § 35-4703. Any regulations promulgated by the Mayor to imple-

ment the provisions of any law made applicable to such a corporation by this chapter shall also apply to such a corporation.

(b)(1) A conversion or management or service contract with a for-profit entity shall not be approved by the Corporation Counsel unless charitable assets, if any, have been adequately protected. In determining whether charitable assets have been adequately protected, the Corporation Counsel shall apply the standard enumerated in § 32-553(c).

(2) The Commissioner of Insurance and Securities, in consultation with the Corporation Counsel, shall assess the for-profit entity the necessary or appropriate costs related to, and shall expend such amounts for, the review of the conversion or management or service contract with a for-profit entity. Such costs may include the costs of expert review, educating the public, or obtaining public comments.

(3) The provisions of §§ 32-555 and 32-557 shall apply to any conversions or management or service contracts with a for-profit entity. (Apr. 9, 1997, D.C. Law 11-245, § 3, 44 DCR 1158; Oct. 23, 1997, D.C. Law 12-32, § 12(b), 44 DCR 4819.)

Cross references. — As to healthcare entity conversion, see § 32-551 et seq.

Effect of amendments. — D.C. Law 12-32 added (b); and added the exception at the beginning of (a).

Legislative history of Law 12-32. — Law 12-32, the "Healthcare Entity Conversion Act of 1997," was introduced in Council and assigned Bill No. 12-112, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 3, 1997, and July 1, 1997, respectively. Signed by the Mayor on July 17, 1997, it was assigned Act No. 12-128 and transmitted to both Houses of Congress for its review. D.C. Law 12-32 became effective on October 23, 1997.

Delegation of Authority Pursuant to D.C. Law 11-245, the Hospital and Medical Services Corporation Regulatory Act of 1996. — See Mayor's Order 97-133, July 30, 1997 (44 DCR 4547).

Cited in Fair Care Found. v. District of Columbia Dep't of Ins. & Sec. Regulation, App. D.C., 716 A.2d 987 (1998).

§ 35-4704. Application for certificate of authority.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 47, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (b)(3).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

References in text. — Section 35-423, referred to in (c), was repealed March 21, 1995, by § 12 of D.C. Law 10-233.

CHAPTER 48. ACCESS TO EMERGENCY MEDICAL SERVICES.

Sec.
35-4801. Definitions.
35-4802. Covered services.

§ 35-4801. Definitions.

For the purposes of this chapter, the term:

(1) "Ancillary services" means standard medical procedures that are reasonably necessary for the diagnosis and treatment of a patient.

(2) "Emergency services" means:

(A) Health care services furnished in the emergency department of a hospital for the treatment of a medical emergency;

(B) Ancillary services routinely available to the emergency department of a hospital for the treatment of a medical emergency; and

(C) Emergency medical services transportation.

(3) "Medical emergency" means the sudden onset or sudden worsening of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent lay person, who possesses an average knowledge of health and medicine, to result in:

(A) Placing the patient's health in serious jeopardy;

(B) Serious impairment to bodily functions; or

(C) Serious dysfunction of any bodily organ or part. (Sept. 11, 1998, D.C. Law 12-145, § 2, 45 DCR 3785.)

Legislative history of Law 12-145. — Law 12-145, the "Access to Emergency Medical Services Act of 1998," was introduced in Council and assigned Bill No. 12-193, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second reading on April 7, 1998 and May 5, 1998, respectively. Signed by the Mayor on May 6, 1998, it was assigned Act No. 12-356, and transmitted to both Houses of Congress for review. D.C. Law 12-145 became effective on September 11, 1998.

§ 35-4802. Covered services.

(a) All health insurers, hospitals or medical services corporations, and health maintenance organizations shall reimburse for emergency services that are due to a medical emergency.

(b) A hospital emergency department or emergency medical service transporter shall provide a health insurer, hospital or medical services corporation, or health maintenance organization with any claim for reimbursement of services, and information on the presenting symptoms of the insured as well as the services provided.

(c) A health insurer, hospital or medical services corporation, or health maintenance organization shall consider both the presenting symptoms and the services provided in processing a claim for reimbursement of emergency services.

(d) A health insurer, hospital or medical services corporation, or health maintenance organization may not deny reimbursement, except for co-payments, deductibles, and co-insurance, for the provision of emergency services that are due to a medical emergency solely because the member failed to obtain pre-authorization for emergency services from the health insurer, hospital or medical services corporation, or health maintenance organization. (Sept. 11, 1998, D.C. Law 12-145, § 3, 45 DCR 3785.)

Legislative history of Law 12-145. — See note to § 35-4801.

TITLE 36. LABOR.

CHAPTER 1. PAYMENT AND COLLECTION OF WAGES.

Sec.
36-104. Unconditional payment of wages conceded to be due.

§ 36-104. Unconditional payment of wages conceded to be due.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 48, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

§ 36-108. Employees' remedies.

Cited in Gill v. Tolbert Constr., Inc., App. D.C., 676 A.2d 469 (1996).

CHAPTER 2. MINIMUM WAGES AND INDUSTRIAL SAFETY.

Subchapter I. Minimum Wages.

§ 36-220. Findings and declaration of policy.

Discharge in retaliation for joining class action. — Employee stated a claim for wrongful discharge by alleging that he had been fired for joining a class action suit based on employer's unlawful deductions of cargo insurance and worker's compensation insurance from employees' pay. Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-220.2. Requirements.

Section references. — This section is referred to in §§ 3-205.19k, 36-220.1, 36-220.3, and 36-220.5.

§ 36-220.9. Violations.

Discharge in retaliation for joining class action. — Employee stated a claim for wrongful discharge by alleging that he had been fired for joining a class action suit based on employer's unlawful deductions of cargo insurance and worker's compensation insurance from employees' pay. Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-220.10. Penalties; prosecution.

Discharge in retaliation for joining class action. — Employee stated a claim for wrongful discharge by alleging that he had been fired for joining a class action suit based on employer's unlawful deductions of cargo insurance and worker's compensation insurance from employees' pay. Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-220.11. Civil liability.

Discharge in retaliation for joining class action. — Employee stated a claim for wrongful discharge by alleging that he had been fired for joining a class action suit based on employer's unlawful deductions of cargo insurance and worker's compensation insurance from employees' pay. Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-220.12. Limitations.

Cited in Arias v. United States Serv. Indus., Inc., 80 F.3d 509 (D.C. Cir. 1996).

Subchapter II. Industrial Safety.

§ 36-221. Purpose of subchapter.

Repeal of subchapter. — Section 25 of D.C. Law 7-186 repeals this subchapter. Section 26(a) (codified as § 36-1224(a)) provides that §§ 36-1202, 36-1203, 36-1205 to 36-1223, and the repeal of subchapter II of Chapter 2 of Title 36 shall apply 2 years after approval of the plan by the Secretary.

Editor's notes. — To date, the plan approval requirement has not been met. See § 36-1224(a) for the sections which will become effective upon the repeal of this subchapter.

§ 36-222. Definitions.

Cited in Traudt v. Potomac Elec. Power Co., App. D.C., 692 A.2d 1326 (1997).

§ 36-228. Employer to furnish safe place of employment, information required by Board, report of employees' injury or death, and record of employees.

Duty of care not preempted. — The Occupational Safety and Health Act does not preempt the general duty of care imposed by this section. Traudt v. Potomac Elec. Power Co., App. D.C., 692 A.2d 1326 (1997).

Sufficient control existed to make company an employer. — Electric utility company's ownership of a manhole system and electric cables, together with the authority it reserved in the contract to monitor the work of an independent contractor and to perform other work simultaneously at the job site, established its control of the place of employment sufficient to make it an employer of the independent contractor's employee. Traudt v. Potomac Elec. Power Co., App. D.C., 692 A.2d 1326 (1997).

Cited in Fry v. Diamond Constr. Inc., App. D.C., 659 A.2d 241 (1995).

CHAPTER 3. WORKERS' COMPENSATION.

§ 36-301. Definitions.

When used in this chapter, the term:

* * * * *

(17B) "Professional athlete" means a skilled athlete under a contract of hire or collective bargaining agreement.

(17C) "Professional athlete's work life expectancy" means the work life expectancy of a professional athlete that is determined separately for each professional sports franchise in the District by the Office of Workers' Compensation through its rulemaking authority.

(17D) "Safe workplace program" means a program that an employer implements voluntarily to promote safety in the workplace. A certified program shall include a formal written safety policy developed by a safety committee made up of equal numbers of management representatives and employee representatives who are elected by their peers and who serve on the clock, and whose functions include a workplace inspection at least annually, regular meetings with written records, and making recommendations to the employer of ways to eliminate workplace hazards and unsafe work practices, appropriate training in hazard assessment and control, effective accident and incident identification and the role of the federal and local Occupational Safety and Health Administration. Where there is a duty to bargain collectively, the employer shall collectively bargain the use and implementation of the safe workplace program.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(a), 46 DCR 891.)

Section references. — This section is referred to in §§ 1-1188.14, 3-205.19k, and 36-311.

Effect of amendments. — D.C. Law 12-229 added (17B), (17C), and (17D).

Legislative history of Law 12-229. — Law 12-229, the "Workers' Compensation Act of 1998," was introduced in Council and assigned Bill No. 12-192, which was referred to the Committee on Government Operations. The Bill was adopted on first and second reading on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-571, and transmitted to both Houses of Congress for review. D.C. Law 12-229 became effective on April 16, 1999.

Purpose of Act. — The purpose of the Workers' Compensation Act is to advance the humanitarian goal of providing compensation to employees for work-related disabilities reasonably expeditiously, even in arguable cases. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Effect of Appropriations Act of 1996 on this chapter. — The Omnibus Consolidated

Rescissions and Appropriations Act of 1996, providing for summary affirmance of cases pending for more than twelve months before the Benefits Review Board, was without effect on operation of the now-repealed District of Columbia Workmen's Compensation Act of 1928, which was replaced by the District of Columbia Workers' Compensation Act of 1979; thus, where claimant suffered a work-related injury in 1978, he was not entitled to summary affirmance of his claim under the Appropriations Act. Washington Metro. Area Transit Auth. v. Beynum, 145 F.3d 371 (D.C. Cir. 1998).

Standard of review. — The Court of Appeals will uphold an agency interpretation of the Workers' Compensation Act unless the interpretation is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. Mushroom Transp. v. District of Columbia Dep't of Emp. Servs., App. D.C., 698 A.2d 430 (1997).

Presumption of compensability. — There is a presumption of compensability under the Workers' Compensation Act. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

To come within the presumption of compensability, a claimant must make an initial showing of some evidence of a death or disability and a work-related event, activity, or requirement that has the potential of resulting in or contributing to the death or disability. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

The statutory presumption of compensability may be dispelled by circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Burden of proof. — A workers' compensation claimant must provide some evidence that the disability is connected with the employment before the burden of production is shifted to the employer; once shifted, the employer has the burden of producing substantial evidence demonstrating that the disability did not arise out of and in the course of employment. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

No right to benefits where employee resigns for economic reasons.

Employee's decision to quit her job with one company and begin a new job with another company arose entirely out of her motivation to gain a higher salary; thus, the fact that she was diagnosed with a work-related injury prior to leaving her previous job did not entitle her to wage loss benefits. Franklin v. District of Columbia Dep't of Emp. Servs., App. D.C., 709 A.2d 1175 (1998).

Pre-existing condition.

A post-Act aggravation of a pre-existing injury found to be compensable under the 1979 Act. Harris v. District of Columbia Office of Worker's Comp., App. D.C., 660 A.2d 404 (1995).

Aggravation of a pre-existing condition and repeated trauma that contribute to a disability may constitute a compensable injury under the Workers' Compensation Act. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

An aggravation of a preexisting condition may constitute a compensable accidental injury under this chapter. Metropolitan Poultry v. District of Columbia Dep't of Emp. Servs., App. D.C., 706 A.2d 33 (1998).

Arising out of and in the course of employment.

Under the "going and coming" rule, the occurrence of employee injuries sustained off the work premises, while en route to or from work, do not fall within the category of injuries in the course of employment. Kolson v. District of Columbia Dep't of Emp. Servs., App. D.C., 699 A.2d 357 (1997).

Injury off the work premises. — The general rule is that the occurrence of employee injuries sustained off the work premises, while en route to or from work, do not fall within the category of injuries "in the course of employment." McKinley v. District of Columbia Dep't of Emp. Servs., App. D.C., 696 A.2d 1377 (1997).

When a traveling employee is injured while engaging in a reasonable and foreseeable activity that is reasonably related to or incidental to his or her employment, the injury arises in the course of employment. Kolson v. District of Columbia Dep't of Emp. Servs., App. D.C., 699 A.2d 357 (1997).

A bus driver, who was injured at 4:30 a.m. while walking from the bus terminal to a hotel following an out-of-town assignment, received his injury while engaging in a foreseeable activity reasonably related to his employment; thus, the injury arose in the course of employment. Kolson v. District of Columbia Dep't of Emp. Servs., App. D.C., 699 A.2d 357 (1997).

Aggravation by nonemployment related factors. — The fact that other, nonemployment related factors may also have contributed to or additionally aggravated the malady, does not affect the employee's right to compensation under the aggravation rule. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Emotional injury claim.

Emotional injuries resulting from job stress are, under certain circumstances, compensable "accidental injuries" under the Workers' Compensation Act. Sturgis v. District of Columbia Dep't of Emp. Servs., App. D.C., 629 A.2d 547 (1993).

Emotional injuries resulting from job stress are, in appropriate circumstances, compensable "accidental injuries" under this section; in order for a claimant to establish that an emotional injury arises out of the mental stress or

mental stimulus of employment, the claimant must show that actual conditions of employment, as determined by an objective standard and not merely the claimant's subjective perception of his working conditions, were the cause of his emotional injury. The objective standard is satisfied where the claimant shows that the actual working conditions could have caused similar emotional injury in a person who was not significantly predisposed to such injury. Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).

Causation in emotional injury claim. The pertinent question in determining whether an emotional injury arises out of the mental stress or mental stimulus of employment is whether the stresses of the job were so great that they could have caused harm to the average worker. Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).

Emotional injury caused by sexual harassment. Where emotional distress is based on sexual harassment, the tort falls outside of the definition of "injury" under this chapter because the injury neither arises out of employment, nor is it inflicted because of employment; thus, an intentional infliction of emotional distress claim, with negligible physical consequences, is not barred by the exclusivity provisions of this chapter when it is linked to a sexual harassment claim. Lucero-Nelson v. Washington Metro. Area Transit Auth., 1 F. Supp. 2d 1 (D.D.C. 1998).

Income from business not wages. — Income from a business owned by the claimant, even though he contributes some work to it, should not be used to reduce disability; the general rule is that profits derived from a business are not considered as earnings and cannot be accepted as a loss of earning power unless they are almost entirely the result of the claimant's personal management and endeavor. Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996).

Dependency upon decedent's support. — Substantial evidence supported hearing examiner's finding that widow had been dependent upon decedent's financial support to pay normal living expenses for herself and their son, and was therefore "dependent" upon decedent within the meaning of this section, notwithstanding the fact that she had income independent of his support. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 716 A.2d 976 (1998).

Evidence sufficient to create presumption of compensability. — Evidence was sufficient to create a presumption of compensability where it showed that the claimant suffered three work-related injuries and that the second and third injuries, as well as the nature of his work, aggravated the first injury, caused the claimant chronic back pain, and resulted in claimant's progressive degenerative back condition. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Cited in Murrell v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 40 (1997); Tekle v. Foot Traffic, Inc., App. D.C., 699 A.2d 410 (1997); Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196 (1997); Bellamy v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1204 (1997); Stone v. District of Columbia Dep't of Emp. Servs., App. D.C., 707 A.2d 789 (1998); Hicks v. Alleghent E. Conference Ass'n of Seventh-Day Adventists, Inc., App. D.C., 712 A.2d 1021 (1998).

§ 36-302. Administration; annual report to Council.

* * * * *

(b) The Mayor shall report annually to the Council by February 1st of each year on the status, from the previous fiscal year, of the workers' compensation program. The report shall include the following:

(1) The total number of cases, the total number of lost time cases, the number of medical only cases, the number of cases where no compensation was paid, the number of cases that are more than 500 weeks, the number of permanent partial disability scheduled cases, the number of permanent partial disability nonscheduled cases, the number of permanent total disability cases, the number of temporary total disability cases, the total number of lost time cases, the number of medical only cases, the number of cases in which claimant was represented by an attorney, cumulative total attorney fees paid, the number of cases controverted, the number of controverted cases decided in favor of employer and decided in favor of claimant, the growth in the assigned

risk plan, the number of cases in and the future liability of the special fund; and

(2) The percentage of the total number of cases each year that are: more than 500 weeks; permanent partial disability; permanent partial disability nonscheduled; permanent total disability; and temporary total disability. (July 1, 1980, D.C. Law 3-77, § 3, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(b), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 rewrote (b).

Legislative history of Law 12-229. — See note to § 36-301.

§ 36-303. Coverage.

Construction.

Although there is a presumption of compensability under the Workers' Compensation Act, that presumption may be overcome. McKinley v. District of Columbia Dep't of Emp. Servs., App. D.C., 696 A.2d 1377 (1997).

Benefits received from another state no shield to exclusivity of remedy. — Effort by plaintiff/passenger injured in automobile accident, in action against co-worker/driver, to use her benefits received under the Maryland Workers' Compensation Act as a shield against the preclusive effect of § 36-304(b) held unavailing. The "entitlement" to which that section refers is entitlement upon the occurrence of an injury, i.e., at the time of injury. It is that automatic liability for which the employer must purchase insurance. Cruz v. Paige, App. D.C., 683 A.2d 1121 (1996).

Cited in Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997); Parkhurst v. District of Columbia Dep't of Emp. Servs., App. D.C., 710 A.2d 854 (1998); Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).

§ 36-304. Exclusiveness of liability and remedy.

General. — When an employee is injured or killed in the course of employment, workers' compensation remedy is exclusive remedy available to employee. Hicks v. Alleghent E. Conference Ass'n of Seventh-Day Adventists, Inc., App. D.C., 712 A.2d 1021 (1998).

Discrimination claims. — Where an employee's claim for emotional distress was based on her having been terminated from her job because of her pregnancy, and therefore because of her gender, her claim was not barred by this chapter. Harvey v. Strayer College, Inc., 911 F. Supp. 24 (D.D.C. 1996).

The court erroneously applied the Underwood decision to include "mixed cause" claims of emotional injury grounded only in part on sexual harassment; such mixed cause claims may be compensable under the Workers' Compensation Act. Parkhurst v. District of Columbia Dep't of Emp. Servs., App. D.C., 710 A.2d 854 (1998).

Civil action for injunctive relief not precluded by Workers' Compensation Act. — Civil action seeking injunctive relief for breach of employment contract is a claim in equity, not an action seeking to recover damages at law, and, therefore, is not precluded by the Workers' Compensation Act. Hicks v. Alleghent E. Conference Ass'n of Seventh-Day Adventists, Inc., App. D.C., 712 A.2d 1021 (1998).

Benefits received from another state no shield to exclusivity of remedy. — Effort by plaintiff/passenger injured in automobile accident, in action against co-worker/driver, to use her benefits received under the Maryland Workers' Compensation Act as a shield against the preclusive effect of subsection (b) held unavailing. The "entitlement" to which that section refers is entitlement upon the occurrence of an injury, i.e., at the time of injury. It is that automatic liability for which the employer must purchase insurance. Cruz v. Paige, App. D.C., 683 A.2d 1121 (1996).

Tort claims against independent contractors. — Negligence of employee allegedly controlled and supervised by an independent contractor operating the business can serve as the basis for a negligence claim against the independent contractor, even though the plaintiff has recovered worker's compensation from the business' owner. Beegle v. Restaurant Mgt., Inc., App. D.C., 679 A.2d 480 (1996).

Cited in Grunley Constr. Co. v. Conway Corp., App. D.C., 676 A.2d 477 (1996); Traudt v. Potomac Elec. Power Co., App. D.C., 692 A.2d 1326 (1997); Tekle v. Foot Traffic, Inc., App. D.C., 699 A.2d 410 (1997).

§ 36-305. Commencement of compensation; maximum compensation.

* * * * *

(b) Compensation for disability or death shall not exceed the average weekly wages of insured employees in the District of Columbia or $396.78, whichever is greater. For any one injury causing temporary or permanent partial disability, the payment for disability benefits shall not continue for more than a total of 500 weeks. Within 60 days of the expiration of the duration of the compensation provided for in this subsection, an employee may petition the Mayor for an extension of up to 167 weeks. The extension shall be granted only upon a finding by an independent medical examiner appointed by the Mayor of continued whole body impairment exceeding 20% under the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. An injured employee shall have up to 3 years after termination of nonscheduled benefits to re-open his or her case due to changes in condition.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(c), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 added the second, third, fourth, and fifth sentences in (b).

Legislative history of Law 12-229. — See note to § 36-301.

Maximum allowable award. — After fixing a claimant's compensation rate under § 36-308, the Department of Employment Services must ensure that the rate does not exceed the maximum allowable award established according to the means provided by this section. Long v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 329 (1998).

Calculating supplemental allowance. — Where petitioner's original benefit rate was less than the maximum amount at the time the award was made, the supplemental allowance should be calculated under § 36-306(c). Long v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 329 (1998).

§ 36-306. Supplemental allowance.

Calculating supplemental allowance. — Where petitioner's original benefit rate was less than the maximum amount at the time the award was made, the supplemental allowance should be calculated under subsection (c) of this section. Long v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 329 (1998).

Meaning of "totally and continuously disabled." — The use of the word "totally" in subsection (a) of this section establishes that those with "partial" disabilities are not eligible for supplemental allowances. Hively v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 1158 (1996).

Although "continuously" and "permanently" have slightly different meanings and therefore are not entirely interchangeable, and the Council's use of the word "continuously" in subsection (a) of this section has created some ambiguity as to who is eligible for supplemental allowances, nonetheless, claimants with temporary disabilities are not eligible to receive supplemental allowances. Hively v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 1158 (1996).

§ 36-307. Medical services, supplies, and insurance.

* * * * *

(a-1)

* * * * *

(5) Each provider of medical care or services pursuant to this chapter shall use a standard coding system for reports and bills generated pursuant to this chapter. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the Mayor. This fee schedule shall be based on 113% of Medicare's reimbursement amounts.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(d), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 rewrote (a-1)(5).

Legislative history of Law 12-229. — See note to § 36-301.

Right to medical benefits separate from right to income benefits.

In accord with bound volume. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Utilization review report must be addressed. — Department of Employment Services must specifically address utilization review report presented and articulate reasons why conclusion of report is rejected. Sibley Mem. Hosp. v. District of Columbia Dep't of Emp. Servs., App. D.C., 711 A.2d 105 (1998).

Cited in Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Franklin v. District of Columbia Dep't of Emp. Servs., App. D.C., 709 A.2d 1175 (1998).

§ 36-308. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

* * * * *

(3) In case of disability partial in character but permanent in quality, the compensation shall be 66⅔% of the employee's average weekly wages which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with paragraph (2) or (4) of this subsection respectively, and shall be paid to the employee, as follows:

* * * * *

(U-i) In determining disability pursuant to subparagraphs (A) through (S) of this subsection, the most recent edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* may be utilized, along with the following 5 factors:

(i) Pain;
(ii) Weakness;
(iii) Atrophy;
(iv) Loss of endurance; and
(v) Loss of function.

(V)

* * * * *

(iii) If the employee voluntarily limits his or her income or fails to accept employment commensurate with the employee's abilities, the employee's wages after the employee becomes disabled shall be deemed to be the amount the employee would earn if the employee did not voluntarily limit his or her income or did accept employment commensurate with the employee's abilities. Notwithstanding the provisions of this section, in the case of injury occurring on or after April 16, 1999, the periods of compensation set forth in subparagraphs (A) through (S) of this paragraph shall each be reduced by a proportion of 25% of the stated period of weeks, rounded upward to the nearest whole week.

(W) The compensation and remuneration payable to a professional athlete claimant pursuant to subparagraph (V)(ii) of this paragraph shall be determined by referring to the date of the claimant's disability and a date that is not later than the date on which the claimant's employment as a professional athlete would have ended if the disability for which he or she seeks compensation and remuneration pursuant to subparagraph (V)(ii) of this paragraph had not occurred.

* * * * *

(6)

* * * * *

(C) The requirements of this paragraph shall apply to injuries occurring prior to April 16, 1999.

* * * * *

(8) The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding §§ 36-316 and 36-317, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 36-309. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to §36-330. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order.

(9) Repealed.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(e), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229, added (3)(U1); added the last sentence in (3)(V)(iii); added (6)(C); rewrote (8); and repealed (9).

Legislative history of Law 12-229. — See note to § 36-301.

Purpose.

The purpose of the second injury provision in

paragraph (6) of this section is to encourage employers to hire and retain handicapped workers by limiting employers' liability for disabilities that result from the combination of pre-existing impairment and a subsequent work-related accident; in this way, the second injury provision provides a carrot to augment the stick of the prohibition in § 1-2501 against discrimination based on physical handicap. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997).

Construction of subsection (9). — It was reasonable for the Department of Employment Services hearing officer to conclude that the word "federal" in item (2) of subsection (9) modifies both "old age benefits" and "survivors insurance benefits," and that therefore an employer was not eligible for a credit for private insurance benefits received by deceased employee's widow. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 716 A.2d 976 (1998).

Right to medical benefits separate from right to income benefits.

In accord with bound volume. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Site of injury and disability do not have to be the same. — There is nothing in the legislative history that reveals an intent to restrict recovery of a schedule award to instances where the site of the injury and disability coincide. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 470 (1996).

Eligibility for special fund reimbursement. — Eligibility for Special Fund reimbursement under paragraph (6)(B) of this section is to be based on whether the employee's pre-existing disability was manifest to the employer at any time prior to the compensable injury. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997).

An employer is eligible for Special Fund reimbursement of workers' compensation payments under paragraph (6) of this section if he establishes that the employee's pre-existing disability was manifest to the employer prior to the second injury even though that may have been after the date the employee was hired. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997).

Calculating supplemental allowance. — Where petitioner's original benefit rate was less than the maximum amount at the time the award was made, the supplemental allowance should be calculated under § 36-306(c). Long v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 329 (1998).

Total disability. — A claimant suffers from total disability if his injury prevents him from engaging in the only type of gainful employment for which he is qualified; it does not mean total helplessness, and the claimant need not show that he is no longer able to do any work at all. Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996).

Measuring degree of disability. — Degree of disability cannot be measured by physical condition alone, as there must also be taken into consideration the injured person's age, industrial history, and the availability of work which the employee can do; even a relatively minor injury must lead to a finding of total disability if it prevents the employee from engaging in the only type of gainful employment for which the person is qualified. Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996).

Disability not shown. — Employee's condition held to be not presently disabling where she was able to work full time. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Setoff for employee insurance policy not allowed. — The language "employee benefit plan subject to ERISA" in item (3) of subsection (9) refers to that act's tax provisions, not its insurance provisions; absent any further indication that the legislative intent behind item (3) was to create a setoff for employers for proceeds from voluntarily purchased employee-subsidized life insurance policies, employer would not be entitled to such a setoff. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 716 A.2d 976 (1998).

Entitlement to temporary total disability benefits.

Employer's failure to offer injured employee a "light duty" position did not conclusively establish that the employee was entitled to temporary total disability benefits. Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996).

Recovery of actual lost wages.

When a claimant has suffered a permanent partial disability that is not listed under the schedule provisions set out under subdivisions (3)(A) through (U), a catch-all provision, subdivision (3)(V), entitles a claimant to a wage loss award. In order to qualify for such an award, the employee must actually suffer a reduction in average weekly wages as a result of the disability. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 470 (1996).

Wage loss. — Paragraph (3) entitles a claimant to such benefits by reference to the type of injury suffered, e.g., arm, foot, eye, for specified numbers of weeks, without regard to actual wage loss. DeShazo v. District of Columbia Dep't of Emp. Servs., App. D.C., 638 A.2d 1152 (1994).

Unlike this section's wage loss provisions, a claimant qualifies for a schedule award regard-

less of whether the claimant actually suffers a wage loss as a consequence of the disability. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 470 (1996).

Maximum allowable award. — After fixing a claimant's compensation rate under this section, the Department of Employment Services must ensure that the rate does not exceed the maximum allowable award established through the means provided by § 36-305. Long v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 329 (1998).

Evidence sufficient to support permanent partial disability. — Evidence held sufficient to support a permanent partial disability ruling as to the legs, based upon claimant's testimony and the reports of his treating and examining physicians. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 470 (1996).

Inadequate notice of scheduled award. — Employer received inadequate notice that a scheduled award might be at issue where: (1) the language of the prehearing conference order characterized the claim exclusively as a wage loss claim, and (2) nearly all the evidence submitted by both sides during the hearing dealt with the issue of an unscheduled injury. Transportation Leasing Co. v. Department of Emp. Servs., App. D.C., 690 A.2d 487 (1997).

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995); Daniel v. District of Columbia Dep't of Emp. Servs., App. D.C., 673 A.2d 205 (1996); Mushroom Transp. v. District of Columbia Dep't of Emp. Servs., App. D.C., 698 A.2d 430 (1997); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Milar Elevator Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 291 (1997).

§ 36-309. Compensation for death.

Dependency of widow on decedent's support. — Substantial evidence supported hearing examiner's finding that widow had been dependent upon decedent's financial support to pay normal living expenses for herself and their son, and was therefore "dependent" upon decedent within the meaning of § 36-309, notwithstanding the fact that she had income independent of his support. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 716 A.2d 976 (1998).

§ 36-311. Determination of average weekly wage.

(a) Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

* * * * *

(4) If at the time of injury wages are fixed by the day, hour, or by the output of the employee, the average weekly wage shall be computed by dividing by 26 the total wages the employee earned in the employ of the employer in the 26 consecutive calendar weeks immediately preceding the injury. If the employee has been in the employ of the employer less than 26 weeks, the total wages referred to in paragraph (3) of this subsection shall be the amount the employee would have earned had the employee been employed by the employer for the full 26 calendar weeks immediately preceding the injury and had worked, when work was available to other employees, in a similar occupation; or

* * * * *

(6) If the injured employee has not worked in this employment during substantially the whole of the period, the employee's average weekly wage shall consist of 130 times the average daily wage or salary, which an employee of the same class working substantially the whole of the immediately preceding period in the same or similar employment, in the same or a similar

neighboring place, shall have earned in the employment during the days when so employed.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(f), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 rewrote (a)(4); and added (a)(6).

Legislative history of Law 12-229. — See note to § 36-301.

§ 36-313. Notice of injury or death.

Notice of injury.

Evidence was sufficient to support the Department of Employment Services' finding that a workers' compensation claimant was aware of the relationship between his injuries and his employment on the date he first visited the doctor for treatment of the pain. Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997).

Notice of work-relatedness. — Employer's interrogatory answer, which stated that a workers' compensation claimant informed the employer that he would be seeking medical leave for corrective surgery, did not establish that the employer had notice that the claimant's injury was work-related. Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997).

Employee's statements to his foreman that he had injured his back working at another site, that he was seeing a doctor for physical therapy, and that he needed to be put on light duty were sufficiently precise to constitute notice to that supervisor that employee's injury was work related; the statements informed the foreman of the injury and its relationship to the employment, as required by the exception contained in subsection (d)(1) of this section, and informed the foreman of the time, place, and nature of the injury, as required by the written notice provisions of subsection (b) of this section. Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196 (1997).

§ 36-314. Time for filing claims.

Subjective and objective standards for awareness. — This section incorporates not only a subjective but also and objective ("should have been aware") standard. KOH Sys. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 446 (1996).

Awareness of work-related injury. — Subsection (a) requires the employee to file a workers' compensation claim within one year of the injury. The court's first inquiry, therefore, is whether substantial evidence supported the hearing examiner's decision that plaintiff had been aware, more than a year before filing his claim, that his injuries were work-related. KOH Sys. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 446 (1996).

Plaintiff's mere unconfirmed suspicion, standing alone, was an insufficient basis for a finding that he had been "aware" of the relationship between his injury and employment. KOH Sys. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 446 (1996).

Cited in Renard v. District of Columbia Dep't of Emp. Servs., App. D.C., 673 A.2d 1274 (1996); Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).

§ 36-315. Payment of compensation.

Sick leave benefits. — The requirement that a worker use his sick leave benefits to maintain his wages during the period he is out as a result of a job-related injury may, in practical effect, mean that he loses that protection if, later on, he loses time from work for a non-job-related illness because his otherwise available sick benefits will be exhausted. Gay v. Department of Emp. Services, App. D.C., 644 A.2d 1326 (1994).

Late filing of notice of controversion. — Employer who did not file notice of controversion until more than two months after the 14-day time limit had expired was subject to a 10% penalty for nonpayment. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 716 A.2d 976 (1998).

Cited in Hill v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 909 (1998).

§ 36-316. Invalid agreements.

Discharge in retaliation for joining class action. — Employee stated a claim for wrongful discharge by alleging that he had been fired for joining a class action suit based on employer's unlawful deductions of cargo insurance and worker's compensation insurance from employees' pay. Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-319. Collection of defaulted payments.

Cited in Hill v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 909 (1998).

§ 36-320. Procedure in respect of claims.

* * * * *

(c) The Mayor shall make or cause to be made investigations of claims as he considers necessary, which may include processing the claim through a central system to give the Mayor an advisory opinion on the rate and degrees of disability. Upon application of any interested party the Mayor shall order a hearing within 90 days, unless the Mayor grants a special extension of time for the development of facts. The Mayor shall not use pre-hearing conferences to resolve workers' compensation claims. If a hearing on the claim is ordered, the Mayor shall give the claimant and other interested parties at least 10 days notice of the hearing, served personally upon the claimant and other interested parties or sent to the claimant and other interested parties by registered or certified mail. No additional information shall be submitted by the claimant or other interested parties after the date of hearing, except under unusual circumstances as determined by the Mayor. Within 20 days after a hearing is held, the Mayor shall by order reject the claim or make an award in respect of the claim based on substantial evidence before him. The Mayor shall, by order, reject the claim or make an award in respect of the claim based upon substantial evidence before him, if no hearing is ordered within 20 days after notice is given as provided in subsection (b) of this section.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(g), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 rewrote (c).

Legislative history of Law 12-229. — See note to § 36-301.

Time limits directory. — Time limit in subsection (c) is directory rather than mandatory. Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996).

Reopening a hearing. — To reopen a hearing merely because one party failed to thoroughly investigate the circumstances, facts, and other pertinent information related thereto is an insufficient basis for granting a request under the rubric of "unusual circumstances." Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).

Petitioners failed to demonstrate any unusual circumstances that would have justified reopening the record in a workers' compensation case, where any relevant and material evidence in their possession could have reasonably been presented at the hearing. Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996).

Cited in Allied Sec., Inc. v. District of Columbia Dep't of Emp. Servs., App. D.C., 621 A.2d 824 (1993).

§ 36-321. Presumptions.

Presumption of compensability. — In the District of Columbia, injuries suffered by a worker on the job are presumed by statute to be compensable; this presumption operates to establish a causal connection between the disability and the work-related event. Sturgis v. District of Columbia Dep't of Emp. Servs., App. D.C., 629 A.2d 547 (1993).

To defeat a claim for compensation, an employer must rebut the presumption of compensability by offering evidence that the claim is not one "arising out of and in the course of employment." Sturgis v. District of Columbia Dep't of Emp. Servs., App. D.C., 629 A.2d 547 (1993).

There is a presumption of compensability under the Workers' Compensation Act. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

To come within the presumption of compensability, a claimant must make an initial showing of some evidence of a death or disability and a work-related event, activity, or requirement that has the potential of resulting in or contributing to the death or disability. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Presumption of applicability of chapter. — Under the Workers' Compensation Act, once a claimant demonstrates a work-related event and a subsequent disability, there is a presumption that the claim comes within the provisions of the Act. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Claimant's burden.

In order to invoke the presumption that a claim comes within the provisions of the Workers' Compensation Act, a claimant must provide some evidence of the existence of two basic facts: (1) a death or disability and (2) a work-related event, activity, or requirement that has the potential of resulting in or contributing to the death or disability. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Employer's burden.

In accord with 2nd paragraph in bound volume. Whitaker v. District of Columbia, Dep't of Emp. Servs., App. D.C., 668 A.2d 844 (1995).

To rebut the presumption of work-relatedness, the employer must show by substantial evidence that the disability did not arise out of and in the course of the employment. Davis-Dodson v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 1214 (1997).

Circumstantial evidence. — The statutory presumption of compensability may be dispelled by circumstantial evidence specific and comprehensive enough to sever the potential connection between a particular injury and a job-related event. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Evidence sufficient to create presumption of compensability. — Evidence was sufficient to create a presumption of compensability where it showed that the claimant suffered three work-related injuries and that the second and third injuries, as well as the nature of his work, aggravated the first injury, caused the claimant chronic back pain, and resulted in claimant's progressive degenerative back condition. Brown v. District of Columbia Dep't of Emp. Servs., App. D.C., 700 A.2d 787 (1997).

Cited in Harris v. District of Columbia Office of Worker's Comp., App. D.C., 660 A.2d 404 (1995); Ferreira v. District of Columbia Dep't of Emp. Servs., App. D.C., 667 A.2d 310 (1995); McKinley v. District of Columbia Dep't of Emp. Servs., App. D.C., 696 A.2d 1377 (1997); Kolson v. District of Columbia Dep't of Emp. Servs., App. D.C., 699 A.2d 357 (1997); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196 (1997).

§ 36-322. Review of compensation orders.

Forty-five day requirement in subsection (b)(2) directory, not mandatory. — The director of the Department of Employment Services had jurisdiction to consider an employee's challenge to hearing examiner's compensation order issued nearly three years prior; forty-five day provision in subsection (b)(2) is directory, not mandatory. Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).

"Aggrieved party." — A hypothetical or speculative possible injury is not of the character required to make a workers' compensation claimant an "aggrieved party" for purposes of jurisdiction. Bellamy v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1204 (1997).

Cited in Washington Post v. District of Columbia Dep't of Emp. Servs., App. D.C., 675 A.2d 37 (1996); Charles F. Young Co. v. District of Columbia Dep't of Emp. Servs., App. D.C., 681 A.2d 451 (1996); Jimenez v. District of Columbia Dep't of Emp. Servs., App. D.C., 701 A.2d 837 (1997); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997); Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997); Wahlne v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 1196

(1997); Stone v. District of Columbia Dep't of Emp. Servs., App. D.C., 707 A.2d 789 (1998).

§ 36-324. Modification of awards.

Change of circumstances. — Subsection (a)(1) of this section does not restrict expressly the required change of circumstances to medical conditions; thus it would not be unreasonable to recognize a change in the economic component, such as the lack of availability of employment suitable to the disabled worker's condition, as a basis for a change of circumstances warranting modification. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997).

Threshold showing required. — To obtain an evidentiary hearing on a modification petition under the workers' compensation statute, a claimant must make a threshold showing that there is reason to believe that a change of conditions has occurred. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997).

"Reason to believe" standard. — The "reason to believe" standard in subsection (a)(1) of this section requires an affirmative factual showing that a change of conditions has occurred. Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 703 A.2d 1225 (1997).

§ 36-328. Costs in proceedings brought without reasonable grounds; penalty for unreasonable delay in payment of compensation.

Cited in Hill v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 909 (1998).

§ 36-332. Employer reports.

(a) Within 10 days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Mayor a report setting forth: (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Mayor may require. The employer shall also send a copy of the report together with such other information as may be required by the Mayor to the Department of Employment Services. The employer shall send to the employee or the employee's next of kin, by certified mail, return receipt requested, concurrent with the submission of the report to the Department of Employment Services, a statement of the employee's rights and obligations pursuant to this chapter, including the right to file a claim for compensation within one year from the date of injury or death.

* * * * *

(Apr. 16, 1999, D.C. Law 12-229, § 2(h), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 added the last sentence in (a).

Legislative history of Law 12-229. — See note to § 36-301.

Cited in KOH Sys. v. District of Columbia Dep't of Emp. Servs., App. D.C., 683 A.2d 446 (1996); Washington Hosp. Ctr. v. District of Columbia Dep't of Emp. Servs., App. D.C., 712 A.2d 1018 (1998).

§ 36-333. Penalty for misrepresentation.

Cited in Hill v. District of Columbia Dep't of Emp. Serv., App. D.C., 717 A.2d 909 (1998).

§ 36-335. Compensation for injuries where third persons are liable.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 36-338. Insurance policies.

* * * * *

(c)(1) Employers implementing a safe workplace program shall qualify for certification for a 5% premium discount under the employer's workers' compensation insurance policy.

(2) For each policy of workers' compensation insurance issued or renewed in the District on and after April 16, 1999, there shall be granted, by the insurer, a 5% premium reduction pursuant to rules issued by the Department of Insurance and Securities Regulations, in the premium for the policy if the insured has been certified by the Department of Employment Services, as having a safe workplace program that complies with the requirements of this act and has notified its insurer in writing of the certification. Certification of an insured shall be required for each of the 4 years in which the premium discount is granted. Thereafter, any premium discount authorized pursuant to this act shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience.

(3) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Employment Services that the insured misrepresented the compliance of its safe workplace program.

(4) The Commissioner of Insurance and Securities may promulgate rules and regulations necessary for the implementation and enforcement of this section. (Apr. 16, 1999, D.C. Law 12-229, § 2(i), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 added (c).

Legislative history of Law 12-229. — See note to § 36-301.

§ 36-340. Special fund.

* * * * *

(b) The Mayor shall be the custodian of the special fund, and all moneys and securities in such fund shall be held in trust by the Mayor and shall not be used for purposes other than those provided by this chapter. The Mayor may invest any portion of the fund which, in the opinion of the Mayor, is not needed for current requirements in bonds or notes of the United States or any federal land bank; provided, that such investments are made pursuant to the Financial Institutions Deposit and Investment Act of 1997.

* * * * *

(d) Payments into such fund shall be made as follows:

* * * * *

(3) The total assessment amount shall be allocated between self-insured employers and insured employers based on paid losses for the fiscal year preceding the year in which the assessment is based. The method of assessing self-insured employers shall be based upon paid losses. The method of assessing insured employers shall be a surcharge based on premium as set forth in this subsection. The portion of the total aggregate assessment to be collected from self-insured employers shall be equal to that proportion of the total paid losses during the preceding fiscal year, which the total paid losses of all self-insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year. The portion of the total aggregate assessment that shall be collected from insured employers shall be equal to that proportion of total paid losses during the preceding fiscal year, which the total paid losses made on behalf of all insured employers bore to the total paid losses made by all self-insured employers and insurers on behalf of all insured employers during the preceding fiscal year.

(4) Any employer which becomes self-insured shall be assessed as if it were insured for 24 months after conversion. The new self-insured employer shall be assessed on the basis of premium. The premium basis shall be equal to its premium for the policy period immediately preceding conversion to be self-insured, multiplied by the percentage change in the self-insured's payroll. The payroll measurement period shall be the fiscal year immediately preceding conversion and the subsequent 2 fiscal years.

(5) On or after September 1, 1999, and annually thereafter, the Mayor shall notify insurers of the premium surcharge rate to be effective for policies written or renewed on and after October 1, 1999, and annually thereafter. The Mayor shall notify self-insured employers, at the same time, of the amount to be assessed against self-insured employers for the following fiscal year. The assessment against self-insurers and the surcharge rate applicable to policies of insured employers, together with amounts generated by paragraphs (1) and (2) of this subsection, shall be sufficient to generate revenue needed to satisfy obligations to the Special Fund. Should the Mayor subsequently determine that the assessments are insufficient to meet the Special Fund's obligations during a fiscal year, the Mayor may assess self-insurers and insured employers to cover any anticipated deficiency, based upon the allocation method set forth in this subsection. Self-insured employers and insurers, on behalf of their policyholders, shall remit any emergency assessment within 30 calendar days of receipt of notice from the Mayor.

(6) Every workers' compensation insurer shall collect, from each of its policyholders, an amount equal to the insured employers' assessment through a surcharge based on premium. These assessments shall include any amounts paid by insurers on behalf of their policyholders to cover an emergency assessment by the Mayor during the previous fiscal year. Assessments when collected shall not constitute an element of loss for the purpose of establishing

rates for workers' compensation insurance but, for the purpose of collection, shall be treated as separate costs imposed upon insured employers. The total of the assessment imposed by this subsection shall be stated as a separate cost on an insured employer's policy, or on a separate document submitted to the insured employer, and shall be identified as the "Workers' Compensation Policyholder Surcharge." Each assessment shall be shown as a percentage of the total workers' compensation policyholder premium. The premium surcharge shall be excluded from the definition of premiums for all purposes, including computation of agents' commissions or premium taxes.

(7) Insurers and self-insurers shall forward to the Special Fund all amounts collected pursuant to this section. These collections shall be for the administration of the Special Fund and shall not be part of the General Fund of the District of Columbia. Any balance remaining at the end of any fiscal year shall not revert to the General Fund and shall be used exclusively to offset any Special Fund assessment required in the next immediate fiscal year.

* * * * *

(Mar. 18, 1998, D.C. Law 12-56, § 3, 44 DCR 6933; Apr. 16, 1999, D.C. Law 12-229, § 2(j), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-56, in (b), substituted "Financial Institutions Deposit and Investment Act of 1997" for "subchapter III of Chapter 3 of Title 47."

D.C. Law 12-229 rewrote (d)(3); and added (d)(4) through (7).

Emergency act amendments. — For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Emergency Amendment Act of 1997 (D.C. Act 12-175, October 30, 1997, 44 DCR 6918).

For temporary amendment of section, see § 3 of the Financial Institutions Deposit and Investment Congressional Recess Emergency Amendment Act of 1998 (D.C. Act 12-281, February 25, 1998, 45 DCR 1707).

Section 5 of D.C. Act 12-281 provided for application of the act.

Legislative history of Law 12-56. — Law 12-56, the "Financial Institutions Deposit and Investment Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-264, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 17, 1997, it was assigned Act No. 12-177 and transmitted to both Houses of Congress for its review. D.C. Law 12-56 became effective on March 18, 1998.

Legislative history of Law 12-229. — See note to § 36-301.

References in text. — The "Financial Institutions Deposit and Investment Act of 1997," referred to in (b), is D.C. Law 12-56.

Cited in Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997).

§ 36-341. Administration fund.

(a)(1) There is established in the Treasury of the District of Columbia a fund to provide for the payment of all expenses to administer the provisions of this chapter. The fund shall be administered by the Mayor.

(2) The Mayor shall determine, for fiscal years commencing on or after October 1, 1999, the cost of administration of this chapter for each fiscal year and shall prorate and assess the costs of administration as provided in subsections (d) and (f) of this section. The cost of administration shall include any expenses that have been incurred, will be incurred, or that will accrue during the fiscal year.

(3) The Mayor shall determine, in each fiscal year commencing on or after September 30 of the fiscal year in which the Workers' Compensation Amend-

ment Act of 1998 becomes effective, prior to the commencement of the fiscal year, the cost of administration of this chapter. The cost of administration shall include any expenses to be incurred or that will accrue during the fiscal year.

(b) The provisions of § 36-340(b) and (e) shall apply to the fund established pursuant to paragraph (1) of this subsection.

(c) The Mayor shall determine, at the end of each fiscal year, the cost of the administration of this chapter. The cost of administration shall include any expenses to be incurred or which will accrue during the fiscal year.

(d) The total amount of costs to administer this chapter, shall be pro rated among the carriers and self-insurers authorized to insure pursuant to § 36-334. The assessment base shall be the total amount of compensation and medical payments that carriers and self-insurers have paid pursuant to this chapter during the preceding fiscal year; provided, however, beginning with the fiscal year commencing on or after October 1, 1999, the Mayor shall have the authority to assess each carrier or self-insured a minimum annual amount of $1,000.

(e) The assessment for each carrier and self-insurer for the preceding fiscal year shall be redetermined, subsequent to each fiscal year, based upon the actual total amount of compensation and medical payments paid and the administrative costs incurred that year. Adjustments for differences between the beginning year assessment and the year end actual determination, if any, shall be made to the next ensuing assessment.

(f) The Mayor shall assess each carrier and self-insurer for its pro rata share of the total amount of costs to administer this act in the fiscal year pursuant to this section, and shall give written notice by certified or registered mail to each carrier or self-insurer of the assessment against it.

(g)(1) Assessments shall be paid within the time prescribed by the Mayor.

(2) For a period not to exceed 12 months following April 16, 1999, the Mayor may permit payment of the assessment of each carrier or self-insured in quarterly installment payments.

(h) If a deficit is projected to occur in the administration of the fund created pursuant to subsection (a) of this section, prior to the end of the fiscal year, the Mayor is authorized to implement an emergency assessment in an amount deemed necessary to avoid the deficit. Self-insurers and carriers, on behalf of their policyholders, shall remit the emergency assessment within 30 calendar days of receipt of the assessment.

(i) The Mayor is authorized to promulgate rules deemed necessary or appropriate to carry out the purposes of this section, including provisions for making and preserving appropriate records, paying of assessments, inspecting these records, and the submission by carriers and self-insurers of reports prescribed by the Mayor.

(j) If a carrier or self-insurer fails to pay the assessment referred to in subsection (f) or (h) of this section, or to make and preserve records in the form and manner required by the Mayor, to file a report in the form and manner required by the Mayor, or to allow the Mayor to inspect records required by rules issued pursuant to this section, the Mayor may suspend or revoke the authorization of a carrier to insure for workers' compensation or a self-insurer to act as a self-insurer pursuant to this chapter. (July 1, 1980, D.C. Law 3-77, § 42, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(k), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 rewrote the section.

Legislative history of Law 12-229. — See note to § 36-301.

References in text. — The effective date of the Workers' Compensation Amendment Act of 1998, referred to in (a)(3), is April 16, 1999.

Cited in Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Emp. Servs., App. D.C., 704 A.2d 295 (1997).

§ 36-342. Retaliatory actions by employer prohibited.

At-will employees. — As with other workers, at-will employees may not be discharged if the grounds for the firing are specifically proscribed by some statute. Washington v. Guest Servs., Inc., App. D.C., 703 A.2d 646 (1997).

Cited in Freas v. Archer Servs., Inc., App. D.C., 716 A.2d 998 (1998).

§ 36-342.2. Commissioner of Insurance and Securities; rate filings.

(a) The Commissioner of Insurance and Securities ("Commissioner") shall take into consideration the profits of the insurers when evaluating the rate filing for workers' compensation insurance.

(b) Each rating organization shall file, within 60 days after April 16, 1999, a loss cost filing for new and renewal policies for workers' compensation insurance to be effective on and after April 16, 1999.

(c) The filing shall reflect no less than a 11.3% reduction in benefits. The filing shall be subject to approval or disapproval by the Commissioner, but an approval or disapproval shall be made not later than 60 calendar days after first receipt of the loss cost filing.

(d) Within 30 days of the Commissioner's final decision regarding a filing by a rating organization made pursuant to this section, each insurer writing workers' compensation insurance in the District shall file revised rates for the voluntary market in accordance with this decision. These revised rates shall be applicable to all new and renewal workers' compensation insurance policies effective on or after April 16, 1999. For any policy in effect on April 16, 1999, through the end of the policy period the premium shall be reduced by a percentage which equals the benefit level reduction. With respect to new and renewal policies effective on or after April 16, 1999, and before the final approval of the rates filed pursuant to this section, each workers' compensation insurance carrier shall, not later than 45 days after the rates approved pursuant to this section become final, adjust the premium of the new or renewal policy for the period after April 16, 1999, to reflect the difference between the premium on the policy as issued and the premium which reflects the rates as finally approved. (July 1, 1980, D.C. Law 3-77, § 43b, as added Apr. 16, 1999, D.C. Law 12-229, § 2(m), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 added this section.

Legislative history of Law 12-229. — See note to § 36-301.

§ 36-343. Appropriations.

(a) There is hereby authorized to be appropriated such sum as is necessary for the Mayor to administer the provisions of this chapter.

(b) The Mayor shall study and report to the Council on a proposal to reclassify Office of Workers' Compensation Hearing Examiners as Administrative Law Judges ("ALJs") and to raise their level of compensation.

(c) The Mayor shall develop performance measures and qualifications for the ALJs for the Office of Workers' Compensation and recommend compensation levels within 90 days after April 16, 1999.

(d) Within 2 years following April 16, 1999, the Mayor shall submit to the Council an evaluation of the District's workers' compensation program that shall include the following:

(1) An analysis of the impact of provisions contained in this act in reducing costs, improving efficiency, and maintaining access to health care;

(2) A recommendation on whether the District government should assume additional administrative functions related to the workers' compensation program including the statistical analysis and ratemaking now undertaken by the National Council on Compensation Insurance, including an assessment of costs involved;

(3) A recommendation on whether the District should adopt a managed care approach and a preferred provider approach and rationale if such a policy is recommended;

(4) An evaluation of the effectiveness of the Department of Insurance and Securities Regulation in regulating workers' compensation insurance including the basis of ratemaking decisions and encompassing any recommended changes in law, regulation or administration to improve effectiveness;

(5) An analysis of and recommendation to address the disproportionate burden on District businesses posed by the pre-1982 claims under the Longshore and Harbor Workers' Act including estimates on savings possible if the U.S. Department of Labor is held to administrative cost standards equal to those associated with post-1982 claims;

(6) A recommendation on whether the District should create a "state accident fund" as exists in other jurisdictions as a means to reduce overall premium costs through more effective risk management; and

(7) An evaluation of the current occupational class codes and a recommendation for restructuring if advisable. (July 1, 1980, D.C. Law 3-77, § 44, 27 DCR 2503; Apr. 16, 1999, D.C. Law 12-229, § 2(l), 46 DCR 891.)

Effect of amendments. — D.C. Law 12-229 added (b), (c), and (d).

Legislative history of Law 12-229. — See note to § 36-301.

References in text.

The Longshore and Harbor Worker's Act, referred to in (d)(5), is codifed at 33 U.S.C. § 901 et seq.

§ 36-402. Apprenticeship Council; membership; term; compensation.

Section references.

This section is referred to in § 1-633.7.

CHAPTER 10. EMPLOYMENT SERVICES LICENSING AND REGULATION.

§ 36-1002. Licensing requirements for employment agencies, employment counseling services, employer-paid personnel services, job listing services, and employment counselors.

(a)(1) No individual, partnership, association, corporation, contractor, or subcontractor shall operate an employment agency, employment counseling service, or employer-paid personnel service in the District without first obtaining a license for that purpose from the Mayor.

(2) All licenses to operate an employment agency, employment counseling service, or employer-paid job listing service shall be issued for 1 year and may be renewed.

* * * * *

(c)(1) The Mayor shall approve or reject applications for licensure as an employment agency, employment counseling service, employer-paid personnel service, or employment counselor within 60 days from the date the application is received by the Mayor.

* * * * *

(d) Each employment agency, employment counseling service, employer-paid personnel service, and employment counselor licensed pursuant to this chapter shall post the license in a prominent place visible to clients in each place of business maintained by the licensee.

(e) Any license issued pursuant to this section shall be issued as a Class B Employment Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (Mar. 13, 1985, D.C. Law 5-136, § 3, 31 DCR 5727; Apr. 20, 1999, D.C. Law 12-261, § 2003(nn), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 deleted "or job listing service" following "employer paid personnel service" and made a related change in (a)(1); substituted "or employer-paid job listing service" for "employer-paid personnel service, or job listing service" in (a)(2); deleted "job listing service" following "employer paid personnel service" in (c)(1) and (d); and added (e).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second reading on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615, and transmitted to both Houses of Congress for review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 12. OCCUPATIONAL SAFETY AND HEALTH.

§ 36-1206. Occupational Safety and Health Commission.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 49, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in (e).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

CHAPTER 13. FAMILY AND MEDICAL LEAVE.

§ 36-1301. Definitions.

Cited in Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996); Aka v. Washington Hosp. Ctr., 116 F.3d 876 (D.C. Cir. 1997).

§ 36-1302. Family leave requirement.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995); Schwartz v. Paralyzed Veterans of America, 930 F. Supp. 3 (D.D.C. 1996).

§ 36-1303. Medical leave requirement.

Maximum protected period is 16 weeks. — The Family and Medical Leave Act (FMLA) sets up a protected period of only 16 weeks which the employee can choose to take as either paid or unpaid; in no event is the FMLA's protected period longer than 16 weeks. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993).

The maximum protected period for an employee who is away from work because of illness is sixteen weeks, whether paid or unpaid, and there is no way to extend the protection of this section beyond that period. Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

Paid sick leave counts against 16 workweeks. — Subsection (b)(2) indicates that should an employee elect to use accumulated paid sick leave during her 16-week Family and Medical Leave Act (FMLA) medical leave, she will not be entitled to "tacking on," because the paid leave also counts against the 16-week FMLA leave. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993).

Medical documentation not required to survive summary judgment. — Where employer never requested pregnant plaintiff-employee to provide medical certification of her morning sickness or to provide a doctor's opinion that she was unable to perform her duties, plaintiff was under no obligation to seek out medical treatment; employer's request for summary judgment was properly denied. Pendarvis v. Xerox Corp., 3 F. Supp. 2d 53 (D.D.C. 1998).

§ 36-1304. Certification.

Medical documentation not required to survive summary judgment. — Where employer never requested pregnant plaintiff-employee to provide medical certification of her

morning sickness or to provide a doctor's opinion that she was unable to perform her duties, plaintiff was under no obligation to seek out medical treatment; employer's request for summary judgment was properly denied. Pendarvis v. Xerox Corp., 3 F. Supp. 2d 53 (D.D.C. 1998).

§ 36-1305. Employment and benefits protection.

Purpose of section. — This section protects an employee's status once she returns within the protected period, and ensures that employees do not lose benefits or accrued seniority during the protected period. Harrison v. Children's Nat'l Medical Ctr., 121 WLR 405 (Super. Ct. 1993) In accord with the first paragraph in the 1996 supplement. Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

§ 36-1309. Administrative enforcement procedure; relief.

Cited in Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

§ 36-1310. Enforcement by civil action.

Limitation of action. — Under the Family and Medical Leave Act, the aggrieved person has one year from an alleged wrongdoing or its discovery to lodge a complaint in an administrative or judicial forum. Simmons v. District of Columbia, 977 F. Supp. 62 (D.D.C. 1997).

Exhaustion of remedies. — The Family and Medical Leave Act does not require exhaustion of administrative remedies prior to filing a civil action in court. Simmons v. District of Columbia, 977 F. Supp. 62 (D.D.C. 1997).

Cited in Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

§ 36-1311. Notice.

Cited in Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

§ 36-1314. Encouragement of more generous leave policies.

Construction of section. — The language of this section is not only an "encouragement" of employers to be more generous, but also is an acknowledgment by the legislature that the protective coverage provided by the Family and Medical Leave Act has precise and calculable limits. Harrison v. Children's Nat'l Medical Ctr., App. D.C., 678 A.2d 572 (1996).

CHAPTER 14. HEALTH CARE BENEFITS EXPANSION.

Sec.
36-1402. Domestic partnership registration and termination procedures.

§ 36-1402. Domestic partnership registration and termination procedures.

* * * * *

(Mar. 24, 1998, D.C. Law 12-81, § 50, 45 DCR 745.)

Effect of amendments. — D.C. Law 12-81 validated a previously made technical correction in the introductory paragraph of (a).

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill

No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.